VACATION THOUGHTS

ON

CAPITAL PUNISHMENTS.

BY

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"I have seen,
When after execution, judgment hath
Repented o'er his doom."

MEASURE FOR MEASURE.—*Act* 2, *Scene* 2.

Ten Thousand.

LONDON:
W. & F. G. CASH, 5, BISHOPSGATE WITHOUT;
JAMES RIDGWAY, 169, PICCADILLY.

MDCCCLVII.

1860, Sept. 18.
Gift of Mrs.
A. P. Peabody of Cambridge
(Class of 1826.)

TO

AN OLD AND VALUED FRIEND,

STANLEY LEES GIFFARD, LL.D.

THE FOLLOWING PAGES

ARE,

WITH EVERY SENTIMENT OF ESTEEM AND RESPECT,

AFFECTIONATELY INSCRIBED.

May, 1857

"THOU SHALT NOT KILL."

In proposing to expunge from our statute-book the punishment of death, I am not unaware of the opposition to be encountered. The same opposition has however met every attempt to mitigate the cruel severity of our penal code, and in every instance it has been overcome. There never yet was an error which could plead prescription, that had not its worshippers, or a proposed correction of it, which did not fill them with alarm. But the errors have been slowly and effectually exposed, and yet the world has gone on as usual, and men have lived to smile at the phantoms which formerly peopled the pathway of reform. Our penal code especially has been humanized, and capital punishments have all but disappeared from its enactments. This has been attained, however, but by slow and painful progress, against a dogged opposition in both houses of parliament, and, strange to say, amid the outcries and lamentations and minatory predictions of the wise and good.

The most eminent Judges of the land, the most pious dignitaries of the Church, sustained by their eloquence, their learning, and their authority, what Bacon so emphatically calls "the rubricks of blood." Chancellors and Chief Justices, Archbishops and Bishops, voted for the retention of the capital punishment for the offence of stealing to the amount of five shillings in a shop. This no doubt they did conscientiously, but assuredly such examples should warn all not to let their

terrors overcome their reason, or their convictions, however venerable, militate alike against common sense and humanity.

Five and twenty years of no ordinary experience in our criminal courts gives the writer of these pages some title to have a voice in this discussion; and after much patient thought, and much very painful observation, that voice is decidedly for the abolition of capital punishments in every case whatever. Where so much depends, and must necessarily depend, on the constitutional temperament both of the Bench and Jury-box, operative, often unconsciously, on their respective occupants, it is unwise, and as unsafe as unwise, to confide to them an authority which, if exercised in error, is altogether without remedy. Many will think, perhaps, with the great Italian, that man usurps a power which is not his, when he presumes to inflict capital punishment at all. Many there are who will ask with Beccaria, "What right have men to cut the throats of their fellow creatures? Certainly not that on which society and the laws are founded. The laws are only the sum of the smallest portions of the private liberty of each individual, and represent the general will, which is only the aggregate of that of each individual. Did any one ever give to others the right of taking away his life? Is it possible that in the smallest portions of the liberty of each, sacrificed to the good of the public, can be contained the greatest of all good—life? If it were so, how shall it be reconciled to the maxim which tells us that a man has no right to kill himself, which he certainly must have, if he could give it away to another?"

If this be well founded, and it is easier to ridicule than to answer it, it at once disposes of the question. If it be true, what a fearful amount of crime has been committed! Let us however, assume that man has the right to surrender what does not belong to him, and see what the consequences of that surrender have been, and especially in England. The retrospect is the most horrifying, humiliating, and disgusting ever pre-

sented to the gaze of civilization. Yet it must be contemplated. It is essential to the argument, because it will prove, that all the reasons now advanced to sustain death punishment as it exists, were employed to sustain it as it existed, and that experience has shown them to have been futile and unfounded. The buried sophisms long laid in dust, send forth their spectres to affright us, but like spectres, they will vanish in the daylight.

It is frightful to look back on the penal code of England, as it stood even in our own day. Every page of our statute-book smelt of blood. True, the laws were not of our own enacting, but those cruel laws were of our own retention. True, wholesale massacres did not occur as formerly, but even latterly executions were frequent enough to shock humanity, and for offences so disproportionable as to make it shudder. Many who are still alive, might have exclaimed with Lord Coke, and justly, "What a lamentable case it was indeed, to see so many christian men and women strangled on that cursed tree of the gallows: insomuch, that if in a large field a man might see together all the christians that in one year, throughout England, came to an untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed with pity and compassion." Would this have been one whit less applicable within our own memories, when the Bank of England issued their £1 notes, and Mammon sacrificed his human hecatombs at the Old Bailey? Draco, the archon of Athens, who, about two thousand five hundred years ago, proclaimed it as his opinion, that "the smallest crime deserved death, and he could find no other punishment for the greatest," has come down to us as the very incarnation of cruelty. Every schoolboy's heart throbs more quickly at his name. And so be it—let his time-dishonoured memory carry down with it, for centuries to come, an accumulating infamy. But still let us be just. Let even Draco have his due. The glorious ray of the gospel had not reached his mind, nor had its tones of charity ever

touched his heart. It was heathen ignorance, and pagan ferocity, which dictated his code. Under christianity, however, or rather in its despite, Draco has had his rivals; for, alas, in England, a kindred spirit animated our legislation. For the theft of an apple, Draco decreed death—so did we, for the theft of a pocket-handkerchief. Hanging was civilized, christian England's universal panacea—her legislative specific. And this she generously imported into Ireland. "On one circuit," says Mr. O'Connell, "there were one hundred individuals tried before one Judge; of these, ninety-eight were capitally convicted, and ninety-seven of them hanged."* We hanged for everything—for a shilling—for five shillings—for forty shillings—for five pounds—for cutting down a sapling! We hanged for a sheep—for a horse—for cattle—for coining—for forgery—even for witchcraft—for things that were, and things that could not be. Coke's "cursed tree of the gallows," was planted, and prospered in every county throughout the land; and "christian men and women" swung on it, "thick as the leaves in Vallambrosa."

With the exception of witchcraft, this code continued down even to our day. For that imaginary and parliamentary offence, one contribution to the "cursed tree" was an offering of two old women,† by Sir Matthew Hale, the good, and wise, and learned Lord Chief Justice. And all this he unquestionably was; yet he hanged the poor old women, notwithstanding. What a lesson ought this to teach! If wisdom, and worth, and learning, such as our judgment-seat has seldom seen combined, could, under a delusive sense of duty, perpetrate an outrage such as this, so revolting to common sense, so fatal, and so remediless, how careful ought we to be to withhold such a power from a tribunal, so fallible even when most perfect! It

* Speech in Rex *v.* Magee, p. 106.

† The names of these poor creatures, both widows, were Amy Duny, and Rose Callender; they died, protesting their innocence, as they well might. This happened at Bury St. Edmunds.

is incomprehensible, how, amongst a people so noble and generous in their nature, this blood-thirstiness should, from the earliest ages down to that in which we live, have been the unchanging characteristic of our laws. They converted one of the loveliest portions of the world into a vast and nauseating aceldama. Will it be believed, that according to Lord Chancellor Fortescue, more executions for robbery alone, in Henry VI.'s time, took place in England, in one year, than in all France in seven! That in the reign of the eighth Henry, seventy-two thousand robbers suffered death; a speaking proof how feeble was the effect of the punishment on the crime! That according to Sir Matthew Hale, thirteen persons were executed after one assize at which he was present, convicted of having associated with gipsies for above a month! That on the authority of Sir S. Jansen's tables, in twenty-two years, from 1749 to 1771, two hundred and forty persons were convicted of shoplifting and other analogous offences, one hundred and nine of whom were actually executed! That in the last century, one hundred and fifty offences were made statutably capital; under which new-made statutes, six hundred persons, "christian men and women," were condemned to die! That within our own recollection, one hundred and sixteen executions were perpetrated within four years, for the offence of forgery alone! Some of our punishments, too, seem to have been the invention, not of human beings, but of fiends. Take that for high treason. In Captain Walcott's case, a convict for the Rye House Plot, his heir brought a writ of error, after his father's execution, and the judgment was reversed by the King's Bench; which reversal was affirmed by the House of Lords, because the judgment had omitted to say, that *the bowels of the prisoner should be taken out and burned before his eyes, while he was yet alive!!*

Such was the spirit of our cruel laws, and such their equally calamitous administration, when one of those men appeared, whom Providence occasionally sends on earth to mitigate the

misery of his fellow-creatures. This was the great and good Sir Samuel Romilly, a profound lawyer, a learned jurist, a wise and humane legislator, the friend of Bentham, the co-operator with Brougham, the associate of every man and the advocate of every measure likely to ameliorate the social condition of his country. Nauseated by the scenes he had witnessed on his circuit, he determined, that, so far as in him lay, our monster code should lap human blood no longer; well aware of the perils which awaited him—he prepared to encounter them with a hero's courage, and, if necessary, with a martyr's resignation. Of both he had much need: "he shared," says a contemporary journal,* "the fate of all propounders of change in any institution; he was derided by some, pitied by others, by not a few execrated, by almost all regarded as an advocate of a desperate cause." He could well afford to despise their pity, their ridicule and their execration. He was earning for himself a fame immortal, justifying the predictions of the prescient Mirabeau,† and repaying the ingratitude of a misled land, by adding another Howard to her history. The dust of his detractors is scattered before the winds, but his pure name remains, and will remain for ever, amongst the memorials of virtue and the treasures of humanity. He set about his christian work with caution; "As it appeared to me," says his diary, "that I had no chance of being able to carry through the House a bill which was to expunge at once all these laws from the statute-book, I determined to attempt to repeal them one by one." He commenced with that murderous one of the good Queen Bess—the 8th Eliz. c. 4—which made the privately stealing from the person a capital offence! Under this most monstrous enactment

* Edinburgh Review.

† "I will at least tell you how much your letter has touched me: how deeply it bears the stamp of a tender heart and an honest mind, and what a charm these *dulcia sunto* diffuse over the greatest talents and the most vigorous intellectual conceptions."—*Letter of Mirabeau to Romilly*, 1785.

a hungry boy who stole a pocket-handkerchief was liable to be executed. Let it not be said that such an iniquity could not be enforced; worse even than that, was perpetrated, as will be seen hereafter.

The repeal was carried, almost in silence; one solitary Irish Member muttering "innovation." Thus encouraged, in the session of 1810, he attempted to repeal the statute of William, which made a private theft in a shop to the amount of five shillings punishable with death. This bill escaped through the Commons, not without opposition, but was defeated in the Lords by a majority of 31 to 11. Posterity will scarcely give credence to the fact, that in this majority are to be found an Archbishop and six Bishops! The diary has stereotyped their names and sees; and adds, with an acerbity which few will censure,* "I rank these prelates amongst the members who were solicited to vote against the bill, because I would rather be convinced of their servility towards government, than that, recollecting the mild doctrines of their religion, they could have come down to the house, spontaneously, to vote that transportation for life is not a sufficiently severe punishment for the offence of pilfering what is of five shillings' value, and that nothing but the blood of the offender can afford an adequate atonement for such a transgression." The Church will hesitate ere it adopts the alternative thus sarcastically tendered for its acceptance, that its faith was forgotten in its subserviency. But the Church stood not alone. The sages of the woolsack and the bench added the law to the gospel. It is almost incredible how wise men, and learned men, and good men, unexceptionable in all life's relations, could have clung to prejudices so injurious! Lord Chief Justice Ellenborough exclaimed against the bill as an innovation, declaring that he knew not where such speculations were to stop, and strange to say, with rare sagacity naming the very bill,† the repeal of which was next to pass the Com-

* Diary, vol. ii. p. 331. † XII. Ann, st. 1, c. 7.

mons! Innovation, forsooth, as if every improvement was not an innovation! as if every abuse which could plead prescription was therefore to be perpetuated! as if the vile abominations sought to be repealed were not themselves, with scarcely an exception, innovations upon the ancient common law of England! Romilly was not an innovator, he was the repealer of innovation. Again, next year, in 1811, the bill carried through the Commons, was rejected by the Lords, led by three of the most eminent of the Judges. Again, in 1813, undaunted and indefatigable, he reintroduced this bill, carried it through the Commons and lost it in the Lords; an Irish Archbishop, on this occasion, displacing the English one, and five of the episcopal bench supporting him. Again, in 1816, the Commons passed, and the Lords, little being said, again refused it. In 1818, for the last time, he triumphed in the Commons, but death, alas, arrested him in the struggle, and he left to others the consummation of his labours, and the glory of his example. May that resplendent example never be forgotten! May Romilly's untiring perseverance, invincible but by death, animate his successors in this christian cause, till the "cursed tree" is totally uprooted.

It is become a fashion to declare these laws were not enforced to their extremity, and that executions did not follow on conviction. The fact is otherwise; hundreds suffered death under this act. Records enough there are of death inflicted by it. Death, death on the gallows—death for five shillings, and this in a civilized—a christian land! We have seen, according to an undoubted authority,* that this statute alone, in twenty-two years, had one hundred and nine victims positively immolated, the convictions being two hundred and forty. This in the abstract, is sorrowful enough, but to those practically experienced only can be known what frightful individual misery it occasioned; what orphans, what widows, what widowers,

* Jansen's Tables.

what life-long tears of young and old, mingled with the blood which flowed from this enactment; and all for nothing, for this inhumanity repressed not the offence. It is always distressing to dwell upon details, but there is one case recorded, so vouched and so transcendental in its wretchedness, that it never ought to be forgotten. Let every thinking man in England read it line by line, and sentence by sentence, and when he has pondered over it, and risen from its perusal, let him ask his reason and his conscience, whether man should have power over the life of a fellow-creature. Let him remember too, that this infliction was no hasty act—that it was the result of consideration, no doubt anxiously and cautiously given—that it was submitted to the Judges and authorised by the executive! Alas, for poor human nature in its brightest phase; how weakly fallible! yet how presumptuous! "Under the shop-lifting Act" (says Sir William Meredith, addressing the House of Commons in 1777), "one Mary Jones was executed, whose case I shall just mention. It was at the time when press-warrants were issued on the alarm about Falkland Islands. The woman's husband was pressed, their goods seized for some debt of his, and she, with two small children, turned into the streets a begging. 'Tis a circumstance not to be forgotten, that she was very young, *(under nineteen,)* and remarkably handsome. She went to a linen-draper's shop, took some coarse linen off the counter, and slipped it under her cloak. The shopman saw her, and she laid it down. *For this she was hanged.* Her defence was, 'that she had lived in credit, and wanted for nothing, till the press-gang came and stole her husband from her; but since then she had no bed to lie on—*nothing to give her children to eat, and they were almost naked;* and perhaps she might have done something wrong, for she scarcely knew what she did.' *The parish officers testified to the truth of this story.* But it seems there had been a good deal of shop-lifting about Ludgate. An example was thought necessary, (by the Judges,) and this woman was hanged for the comfort and

satisfaction of some shopkeepers in Ludgate street. When brought to receive sentence, she behaved in such a frantic manner as proved her mind to be in a desponding and distracted state, *and the child was sucking at her breast when she set out for Tyburn*" [*gallows*].

Surely this appalling case, if it stood alone, ought to have produced the repeal,—the immediate repeal,—of this sanguinary statute. The salvation of human life in future from the impious mockery of man's discretion ought to have sprung up at once from the blood of Mary Jones. That the conviction of this poor creature was legal—in strictness, legal—no lawyer will deny. The removal of an article even for an inch, if the jury found the intent to steal, was in law a larceny, but a constructive larceny after all. However, if a case ever could have converted the merciless to mercy, it was the case of Mary Jones: she was not the criminal, or, if she was a criminal, the authorities made her one; they took her bread from her—they forced him who earned it, from his happy home, to fight their battles, —perhaps to lose his life in them; she had no bed to lie on, she had no bread for her little ones; and because nature, maternal nature, the holiest and most resistless of all human impulses, could not combat the temptation of the moment, they took her life, and that, while she was herself, in law, an infant! But, say the anti-abolitionists, these times are over, such a tragedy could not be enacted now. No gratitude to them for it; they did, in every case, *as they are doing still;* they clung fast to their unchristian usurpation and held it while they could, with the desperate tenacity of a drowning grasp. No, this tragedy could *not* be enacted now; thanks to the Merediths and Romillys, it could not; thanks to them and men like them who have humanized the spirit of the people, and weaned our laws from the nutriment of blood; the instinct of the age would spurn such an atrocity—every mother in London would start up from her prayers to save, and shield, and shelter the victim.

But let us remember that there was a day, a century after our glorious revolution, under the enlightened sway of protestantism too, in which English law enacted, English Judges recommended, and an English Home Office advised, the perpetration of such an act. And when we talk of such an impossibility being at least attempted, let us remember that in 1814, a Recorder of London was said to have declared it to be the determination of the Regent, to make an example for this offence a child of ten years of age actually at the moment lying under sentence of death for it, in Newgate.* The Recorder was Silvester. Let it be not forgotten, either, that Archbishops and Bishops voted against the repeal—that a Chief Justice denounced the attempt as an innovation—that Eldon, Lord Chancellor, exclaimed "There was no knowing where this was to stop, and that the public ought to know, once for all, in what the criminal code consisted, that their Lordships might not, from time to time and from year to year, have *their feelings distressed!* by discussions like the present;"†—and that this fierce struggle actually continued from poor Mary Jones's case in 1777, down to the year 1818. But it is gone at last, and their Lordships' feelings have since then been severely "*distressed* from time to time" by the indecorous perseverance of men who knew no better—rude and unpolished men—who would not understand why laws, not to be acted on, were still to be retained, and uncouthly thought that the caprice of mankind—even of ministerial mankind, was not to be trusted—credulous and timid men, who weakly suspected that what had been, might be—that another Regent might be ill-advised, and a future Ludgate obtain the "comfort" of another immolation.

* Romilly's Diary, vol. iii. p. 236. It is only just to add that Mr. Garrow said he doubted whether the Recorder ever said so. Sir Samuel however seems to have held a different opinion.

† Parliamentary Debates, 1813.

The next act which Romilly endeavoured to repeal, was that which made stealing in a dwelling-house to the amount of forty shillings a capital offence. This was in May, 1810. On his first attempt he failed in the Commons, defeated by a majority of two; a defeat, however, counterbalanced by the support of Canning, Wilberforce, and that memorable Master of the Rolls, Sir William Grant.*—Well and truly did that great Judge say, that "where the law and the practice were opposite to one another, one of them must be wrong, and he had no doubt it was the law." And never, perhaps, did statute more than this exasperate the public. It was repealed, not so much by parliament as by its own iniquity. Juries would not convict on it —Judges would not act on it. Lord Kenyon, overcome to tears by a shrieking creature, who had just been found guilty, cried out from the bench, "Woman, woman, I don't mean to hang you!" What a solemn, stultifying mockery was this; the Jury condemning the accused, and the Judge sentencing the law! But the juries themselves soon set law, and fact, and authority at defiance. Men, aghast with horror at these wholesale sacrifices, refused to officiate at them. They preferred perjury to blood. How unholy are the laws which generate guilt while professing to extirpate it! Bentham, the great and venerable jurist, undervalued by an age of which he was in advance, suggested the results of legislation such as this. "The mildness of the national character," says he, "is in contradiction to the laws, and, as might be expected, it is that which triumphs. The laws are eluded, pardons are multiplied, offences are overlooked, testimony is excluded, and juries, to avoid an excess of severity, often fall into an excess of indulgence."† So said a still greater man than Bentham, two hundred years before him.—"Any over-great penalty," says Bacon, "besides the acerbity of it, deadens the execution of the law." Our House of Lords differed from Bentham and

* Parliamentary Debates, 1810. † Theory of Legislation.

from Bacon, and, as might be anticipated, they were wrong. But the consequences of their error were tremendous; no less than the menaced demoralization of an entire people. From that error resulted some of the foulest verdicts that ever defiled a jury-box. Here are a few of them, pronounced on indictments preferred under this statute:—

Elizabeth Parsons, for stealing *twenty-three guineas* . *v.* Guilty—39*s.*

Alexander Chalmers, for stealing 333 yards of holland linen, 24 yards of printed linen, value £4 4*s.*; 45 yards of damask, value £16; 26 yards of striped linen, value £3 5*s.*; in the dwelling-house of Edward White . . . . . *v.* Guilty—39*s.*

T. Radford and *T. Williams*, for stealing one £10 note, three £1 notes, two £5 notes, the property of Thomas Hartshorne, in his dwelling-house . . *v.* Guilty—39*s.*

Joseph Day, stealing a watch, value £20; a gold watch string, value £2; a gold chain, value £10; a pair of diamond ear-rings, value £20; a silver snuff-box, value £3; six silk gowns, value £12; two pieces of gold and silver brocaded silk, £60; each being, taken separately, above 40*s.* value . . . *v.* Guilty—39*s.*

These are a few, a very few, of these most monstrous verdicts, taken from a multitude; what their sum total must have been may be inferred from a statement made by Lord Suffield, in the House of Lords, on the 2nd of August, 1833. "I hold in my hand," said his Lordship," a list of 555 perjured verdicts, delivered at the Old Bailey, in fifteen years, for the single offence of stealing from dwelling-houses; the value stolen being, in these cases, sworn above 40*s.*, but the verdicts returned being to the value of 39*s.* only. If required, I will produce the name of every one of these 555 convicts, and shew the value proved to have been stolen." This became too horrible to be tolerated any longer, and what does the reader think was

the remedy? A repeal of the law? No such thing. If that was the result, "the people of England," as Lord Wynford said, on a similar proposal, "could not sleep in safety in their beds." No, but the legislature revised its arithmetic. Man, made in the image of his Maker, rose in the money market. Human life was extravagantly averaged at £5. A rise in the article of no less than sixty shillings a head!

But still, the obstinate juries demurred to the valuation. Perhaps, as for mere blood, they thought the price too low; or, it may be, they remembered that an immortal soul was included in the estimate. Again, therefore, to the scandal and disparagement of public justice, they applied the only remedy in their power. Disregarding the actual amount stolen, they substituted for the old 39*s*., "Guilty of stealing to the value of £4 19*s*." Take one single case under the improved system—it is selected merely for its flagrancy.—A man, named Robinson, was tried at the Old Bailey, in 1831, for robbing his employers to the amount of £1000. Of this property £300 worth was traced to a man to whom Robinson had sold it; and more of it, to the amount of £200, was found in his own room, thus accounting for £500 out of the £1000; the jury found this man guilty of stealing to the amount of £4 19*s*. He was again indicted for stealing to the amount of £25, and again convicted of stealing under £5. There were several other indictments against Robinson, who seems to have been a wholesale depredator; but the prosecutors, after such verdicts, allowed him to plead guilty to them all to the extent of £4 19*s*. The jury remembered that in the previous May, a man had been executed under this very statute, and they shrank from the work of extermination. An ornament* of the bench went far towards justifying such verdicts, which have come down to us, on his high authority, as "pious perjuries."

It would appear indeed, that juries were not alone in repro-

* Blackstone.

bation of this statute. The feeling reached higher and went farther than the jury-box. "There was (says Sir William Grant,) amongst prosecutors, witnesses, juries, judges, and the ministers of the Crown, a general confederacy to prevent the law being executed."*

Thus ever has it been, not merely in modern, but in ancient times. The constitution of man's mind changes not with clime or country, or era, but is always and everywhere the same. A sanguinary system, long continued, is sure to exasperate the popular patience. Outraged humanity rises in its might, and spurning the tortoise pace of legislation, stands between the lawgiver and the victim. This is experience. This is history. We have seen it at home. We may read of it in foreign realms and in remote antiquity. Our cruel enactments, outheroding even Draco's, have been, one by one, reluctantly surrendered to the national indignation. And so were Draco's.—Human nature would not wait upon the heartless calculations of a cold philosophy, and defaced the code while the sage was deliberating. No great wonder, while the pulsations of suffering marked the minutes of the hour-glass. These laws were repealed, as Aulus Gellius tells us, not by the formality of a decree, but by the tacit and unwritten consent of the Athenians. —Solon surrendered what he no longer could sustain. Thus, as has been said, the operations of mankind seem to recur in cycles, and in our day London has only seen what Athens beheld some two thousand years before.

One instance more, and only one, (before we come to the main subject of our argument,) of the folly as well as flagrancy of legislation such as this. Who can forget the outcry raised on the mere hint of a mitigation of the laws relating to forgery? All England was panic-stricken. The banks must stop, public credit would be a thing of history, commercial confidence would vanish into air! Such were the

* Parliamentary Debates, 1810.

predictions of bankers, and merchants, and traders,—of every counting-house—of the whole Exchange; and they prevailed, not unnaturally, for the commercial world were entitled to all deference on the subject; but they prevailed not long. These cruel laws were repealed—repealed after torrents of blood had been shed—after the Jury-box had been desecrated a thousand times, and the kiss which sealed the gospel invocation, had proved to be the kiss of Judas. They were repealed—and wonderful to relate, on the petition of the bankers of every city and exchange in England, except London. It is painful to be compelled to add, that this petition was prompted, not by the statesman's policy, or the philosopher's convictions, or the christian's humanity, but by the same motive which produced their previous opposition—the money market's motive —mere self-interest. So they state candidly in their document. In 1797, a bill had been passed, enabling the Bank of England to issue notes under the value of £5. The forgery of these notes was, of course, a capital offence. The passing of that bill was Moloch's installation. From that fatal date, in eight years, one hundred and forty-six people, of both sexes, were hanged for the forgery of bank notes alone! At last the Old Bailey became a human shambles. The perjury tactics were again adopted; juries would not convict. An expedient was then resorted to by the prosectutors of giving the accused the option of pleading to the minor charge, that of having forged notes in their possession, and so saving their lives. The expedient failed; in the September sessions of 1818, thirty-eight persons were indicted capitally for forgery or uttering. Harassed and terror-stricken at the alternative before them, of inflicting death or violating their consciences, they implored the legislature to relieve them.

At a subsequent period the Duke of Sussex presented a petition to the House of Lords for the abolition of capital punishments in certain cases, signed by seven individuals, who

had been foremen of seven Grand Juries at the Old Bailey during the previous year, and also by eleven hundred merchants, traders, and others, who either had served, or were liable to serve, as jurors for the county of Middlesex. The *annual* returns in trade of the first ninety of the petitioners, amounted to no less than *ten millions* sterling! * This petition is here alluded to, because it shews, in stronger language indeed, the view which Jurors took of the awful duty required of them. The petition declares, that "in the present state of the law, they feel extremely reluctant to convict, where the penal consequences of the offence excite a conscientious horror on their minds, lest the rigorous performance of their duty, as Jurors, should make them accessory to JUDICIAL MURDER! Hence in courts of justice, a most unnecessary and painful struggle is occasioned by the conflict of the feelings of a *just* humanity with the sense of the obligation of an oath." We have seen how true this is, and how ostentatiously, when the conflict came, Juries, almost maddened by the wholesale slaughter of the day, flung their religious obligation to the winds—a dreadful alternative, but one which, in cases of life, experience tells us has been but too frequently adopted, where public opinion and the law conflicted. No doubt nothing can be more unjustifiable than this; yet we cannot alter the constitution of human nature; but what shall we say of a system, which, by arrogantly insulting that nature, weakens the protection by which every man in England retains everything which is worth possessing. Parliament, the guardian of the morals, as well as the property of the nation, has wisely, in such cases, yielded to the tide it could not stem.

The petition of the Bankers virtually abolished punishment of death for forgery, in 1830. It was high time, and only just in time. This important petition was entrusted to Mr. Brougham, no hasty innovator, but a true reformer, cautious of change, of which, when approved, he was indefatigable in the accomplish-

* Duke of Sussex's Speech, September, 1831.

ment. In this petition neither the Bank of England nor the Bankers of London joined—an unenviable reminiscence. The petition was signed by Bankers, and by Bankers only, of two hundred and fourteen cities and towns of the United Kingdom; two hundred and thirty-three Banking-houses, thirty-six Joint-Stock Banking Companies, and five hundred and two individual Bankers affixed their signatures to this petition, which Mr. Brougham advocated with talent and energy, worthy of himself and the occasion; his speech, say the journals of the day, was "splendid, impressive, and unanswerable."

In the session of 1832, capital punishment for forgery was abolished, except in cases of wills, and powers-of-attorney relating to the public funds. We have already alluded to the motive—the selfish motive in which this movement of the Bankers originated. We give now the very words of the petitioners, invaluable words, speaking trumpet-tongued, how insane the folly is which can seek in cruelty the protection of property, or the repression of crime. "Your petitioners," say these candid philanthropists, "find by *experience*, that the infliction of *death*, or even the *possibility of the infliction of death*, prevents the prosecution, conviction, and punishment of the criminal, and *thus endangers the property which it is intended to protect*. We THEREFORE earnestly pray that your honourable house will not withhold from them that protection to *their property* which they would derive from a more *lenient* law." In fact these gentlemen found they had no alternative, they must either have surrendered their substance to the forger, or declared war against the hangman. They saw the gallows was clearly at a discount. One glaring case to this effect will suffice as well as hundreds, though, if necessary, hundreds might be furnished; a man was tried at Carnarvon for forgery to a large amount on the Bank of England; the evidence of the guilt of the prisoner was as satisfactory as possible, and brought the charge clearly home to him; the Jury, however, acquitted him; the next day

he was tried on another indictment for forgery; the evidence in this case was as conclusive as in the former, yet the Jury again acquitted the prisoner; the Judge addressed him in these remarkable words: "Prisoner at the bar—although you have been acquitted by a Jury of your countrymen of the crime of forgery, I am as convinced of your guilt as that two and two make four." The Judge was Chief Baron Richards. Soon afterwards, says the writer, I met one of the Jury and expressed my surprise at the acquittal. "Why," answered he, "neither my fellow jurymen nor myself had the least doubt of the prisoner's guilt, but we were unwilling to bring in a verdict of guilty, because we were aware the prisoner would have been punished with death, a penalty which we conceived to be too severe for the offence."* Thus did the Judge impugn the verdict, thus did the Jury violate their oath, and thus did a sanguinary statute restore these chartered culprits to their profession. Had the punishment for this offence been transportation, such men would not have been let loose upon society.

Thus was the noblest institution in the world daily degenerating into a school of perjury: nor was this all—men would not prosecute. "It is," says Alderman Harmer, in his examination before the Commissioners on Criminal Law in 1835, "a matter of common occurrence for prosecutors and witnesses to devise some stratagem to secure the escape of the offender; and I have known them to suppress facts and colour their evidence to effect their object. When reproved for such conduct, they have justified the act by asserting, that it was better to err in their testimony, than to be the means of taking away the life of a fellow-creature." "The cases which come before the public on bills of exchange, are not, in my opinion, anything nearly equal to the detections which take place and the compromises which are made thereupon; respectable bankers, merchants and solicitors, engage in such compromises the more readily, because

* Correspondent of Morning Herald, April, 22, 1830.

from the merciful feeling of juries, a conviction is uncertain; but many more on account of the highly penal consequences which would result from a successful prosecution. *I cannot calculate, even within a hundred, the number of such compromises which have come within my own knowledge.*"* Mr. Harmer was himself a solicitor, of the most extensive criminal business in the kingdom; he stated to the Committee that, on a moderate computation, he was concerned for one hundred prisoners annually, and that in his professional practice at the Old Bailey, he had had communication with above two thousand.† He adds, "The instances, I may say, are innumerable, within my own observation, of jurymen giving verdicts in capital cases in favour of the prisoner, directly contrary to the evidence; I have seen acquittals in forgery where the verdict astonished every one in court, because the guilt appeared unequivocal, and the acquittal could only be attributed to a strong feeling of sympathy and humanity in the jury to save a fellow-creature from certain death. The old professed thieves are aware of this sympathy, and are desirous of being tried rather on capital indictments than otherwise; it has frequently happened to myself, in my communications with them, that they have expressed a wish that they might be indicted capitally, because there was a greater chance of escape!" The evidence of this gentleman has been the more particularly selected, because from his great intelligence, his known integrity, and his extensive personal knowledge of the subject, it is worth all the theories that ever were invented. A crowd of testimony to the same effect as that of Mr. Harmer might readily be adduced, but it would be only a repetition, stripped of his authority.

Public opinion, which neither Minister nor Parliaments can long resist when it has truth and justice for its basis, thus virtually repealed these inhuman enactments, and what has been

* Second Report on Criminal Law, p. 82.

† Commons' Report—Evidence, May 18, 1819.

the consequence? What of the prophecies! Has public credit failed? Has private confidence ceased? Are the counting-houses closed? Is the Exchange deserted? Does merchant meet merchant with less conscious security than when they elbowed the hangman on their walk from the West End to Lombard Street? Has the crime increased since the repeal? Do the Bankers now need a Committee, or that Committee a solicitor? Scant indeed would be his bill of costs compared with the palmy era of the £1 notes; alas, for the law! and alas, for the prophet! The grand vaticination was, that, in each case where we repealed the capital punishment, there would be an increase of the crime,—as if it signified a single fraction whether there were or not; as if it signified whether five hundred additional pockets were picked, or five hundred more shops were pilfered annually of five shillings over the counter; aye, or that even the Banks lost ten times the sums they did, when put in comparison with the sacred life of man—of whole human hecatombs! But all this alarm was mere hallucination; so far from crime increasing on the repeal, it positively diminished; the law encouraged the crime by deterring prosecution or inducing compromise, and thus giving immunity to criminals. The repeal unfettering men's consciences, depriving the offender of all sympathy or scruple, secured his punishment, and crime decreased. This is proved undeniably by the parliamentary returns. Take the crime in Mammon's estimation most unpardonable, the crime of forgery: in the five years ending with 1820, when the hangman had his deadliest harvest, 645 persons were committed—94 were executed; in the five years ending with 1835, when the capital punishment though not actually, was virtually repealed, the commitments were 351—the executions, nil! This is exclusive of the compromises which took place during the former period, and which, of course, could not be ascertained.

In our view of the subject, believing, as we do, that, under no

circumstances should man's life be taken away by law, and maintaining, as we mean to do, that under no circumstances has man a right so to take it, these statistics are of little import; but for the satisfaction of those who abide by the argument of expediency, we subjoin some from the Home Office Tables annually laid before parliament.*

First, as to *England* and *Wales*:—

Number of persons COMMITTED in *England* and *Wales* for various crimes, during three years immediately *preceding* the repeal, or discontinuance, of the capital punishment for each offence, and the three years immediately *subsequent*.

	Last Execution.	Three Years Before Repeal, &c.		Three Years After Repeal, &c.
		Committed.	Executed.	Committed.
Cattle Stealing, three years ending	1820	.. 113	.. 3	67
Horse Stealing — .	1829	590	22	566
Sheep Stealing — .	1831	.. 787	.. 7	793
Stealing in Dwelling-house .	1831	422	4	520
Forgery — .	1829	.. 213	.. 15	180
Coining — .	1828	39	7	14
Letter Stealing — .	1832	.. 11	.. 1	14
Sacrilege — .	1819	24	2	25
House-breaking — .	1833	.. 2103	.. 8	2410
Burglary — .	1836	787		
Robbery — .	1836	.. 1053	.. 5	889
Arson — .	1836	191	17	113
Riot and Felony — .	1832	.. 208	.. 6	60
Piracy — .	1830	52	2	2
Attempts to Murder — .	1841	.. 661	.. 2	707
(Capital) Assaults on Females .	1836	174	5	185
Other Offences — .	1835	.. 69	.. 9	75
		7497		6620

Decrease—877.

* The reader desirous of additional statistics, may refer with advantage to a little work of T. Wrightson, Esq. (printed for Hearne, 1833, and) containing some very valuable tables from 1810 to 1831:—Or, the Second Report of the Commissioners on Criminal Law, 1836, pp. 21, 22; 40:—Or, a Return (No. 354,) made to the House

These general results for England are in unison with the following Return (No. 165) to the House of Commons, dated 23 March 1837; of the

Number of EXECUTIONS which took place for *London* and *Middlesex*, in 3 years ending 31 Dec. 1830; in 3 years ending 31 Dec. 1833; and in 3 years ending 31 Dec. 1836; together with the Number of COMMITMENTS in each of those periods respectively, for Offences that were capital on 1 January 1830.

Periods.	Executed.	Committed.
In 3 years ending 31 Dec. 1830	52	960
Ditto — — 1833	12	896
Ditto — — 1836	*nil*	823

Here, on turning to the Home Office Tables for London and Middlesex, a striking fact presents itself—namely, that not a solitary conviction for murder took place in the three years during which there was a *discontinuance* of executions. It is unprecedented we believe in the annals of the Old Bailey. (See also Return No. 21, printed in 1846.)

One word more as to murder. The chance of exemption from punishment is quite enormous, the prisoner being *tried for his life*. In all other cases (taken collectively,) with a secondary penalty affixed, the convictions average 77 per cent. In murder they average less than 24 per cent. That is to say, 53 (or more than two out of three) escape, who probably would not have escaped had the penalty been short of death.*

of Commons, 22 May, 1846:—Or, a Paper by A. H. Dymond, Esq., read before the Society for Promoting the Amendment of the Law, July 7, 1856:—Or, lastly, to the following Returns made to the House of Commons; namely, No. 547 printed in 1839—No. 87 printed in 1840—No. 48 printed in 1841—No. 36 printed in 1842—No. 618 printed in 1843—No. 471 printed in 1844—No. 21 printed in 1846—No. 690 printed in 1847. Five of these (No. 87, No. 48, No. 36, No. 618, and No. 21) relate especially to the crime of murder. But we must not omit to mention also some important statistical information given in the *Eclectic Review*, reprinted separately (for Gilpin, London) in 1848.

* This calculation is founded on the three years ending with 1855, in which the commitments were 198. Of these, 29 were insane, leaving 169. Of the 169,

It would be easy to shew that in analogous cases a decrease in severity, was followed by a decrease in crime. "All experience," said Mr. Lennard,* "shews that the repeal of capital punishments had led to an increase of convictions and a diminution of crime." Sir Fitz-Roy Kelly says,† in June, 1840, "A few years before, there were nearly two hundred capital offences on the statute book; now there are only fourteen, and there has been no increase of crime since the repeal." "In no instance," said Mr. Hume,‡ "had offences increased in consequence of the mitigation of the punishment: on the contrary, in every instance, there had been a decrease, so that, in future, capital punishments would be but an unnecessary sacrifice of human life." Such has been the result not only in England, but in various ages and in

only 39 were convicted of murder: the rest were all released as unoffending members of society. *Not one of them was convicted, or even tried, for manslaughter.* Upon that point we have the most unquestionable evidence, as follows:—"Under the head 'Murder' in the Criminal Tables, cases of manslaughter are never included: but persons charged on commitment or indictment with murder and *found guilty of manslaughter* only, are always included *under the head 'Manslaughter.'*"——This mode of making up the official records is obviously essential to the correctness of the Tables, for otherwise the same prisoner would be entered *twice over.*

We have said that the rest were all released as unoffending members of society. But had they been tried on *non-capital* indictments, how few would have been so released!—At the rate of 77 per cent. (the general average) of convictions, how many *convictions* would there have been out of 169 *commitments?* Why, at least 129, instead of only 39 convictions. Therefore the 90 others were acquittals *in excess.* Are we not warranted in asserting that more than two out of every three escape because the denounced penalty is death? Of such a reduction—in the fearful ratio of three to one—*a reduction in the certainty of punishment* for murder, what must be the effect on those who calculate '*their chances*'? The Grand Duke Leopold of Tuscany, after twenty years' experience, was enabled to congratulate his subjects on the rarity of atrocious crime, as well as the decrease of offences in general, resulting from a mitigation of the law. But *he* promoted "*a certainty* of punishment to real delinquents." *We* reverse his maxim, in order to gratify the vindictive thirst for retaliation—'Blood for blood': but in doing so, we sometimes slay the innocent, and—as we have now seen—we often acquit the guilty.

* Parliamentary Debates, 1834. † Ibid, 1840. ‡ Ibid, 1840.

different nations, where this benign and philosophic principle has been recognised. "The laws of the Roman kings," according to our great commentator,* "and the twelve tables of the Decemviri, were full of cruel punishments. The Porcian law, which exempted Roman citizens from the punishment of death, silently abrogated them all. In this period the Republic flourished. Under the Empire severe punishments were revived, and then the empire fell." In reference to the principle, the great orator and magistrate of Rome pours forth his enthusiasm: "Far, from us," says Cicero, "be the punishment of death—its ministers—its instruments! Remove them, not only from their actual operation on our bodies, but banish them from our eyes, our ears, our thoughts; for not only the execution, but the apprehension, the existence, the very mention of these things is disgraceful to a freeman and a Roman citizen."† How sublimely these bursts of the illustrious heathen contrast with the heartlessness of modern cant! "O jus eximium! O Lex Porcia! legesque Semproniæ."‡ In France Brissot§ adopted it. "L'expérience," he says, "de tous les siècles prouve que la crainte du dernier supplice n'a jamais arrêté les scélérats déterminés à porter le trouble dans la société." Sir J. Mackintosh, a great and venerable name, thus reminds the grand jury of Bombay, in his last judicial address, when taking leave of them: "In the seven years ending in 1763, there had been one hundred and forty-one capital convictions, out of which there were forty-seven executions, averaging nearly seven a year. A gradual reduction of convictions and of punishments took place, and in the seven years ending in 1804, under the Presidency of Sir William Syer, the convictions for murder were eighteen, and the executions twelve, not quite two a year: and during the seven years of my presidency, dating from 1804, there were but six

* Commentaries.

† Pro Rabirio. ‡ Cicero, Oratio in Verrem. § Theory of Legislation.

murder convictions, and no execution; yet," he adds, "there was, during that entire period, no diminution in the security of the lives and properties of men."* Here was theory reduced to practice, the result establishing that the theory was sound. The humane experiment of death punishment's repeal has been tried in other countries and in other times, and has been tried beneficially. In Louisiana the code of Mr. Livingstone has excluded death. In England, William the Conqueror decreed—"I prohibit that any man should be put to death for any cause whatever in my dominions." In Russia not one criminal was executed during the whole reign of the autocratical Elizabeth. Catherine the second, who succeeded her with much more genius, followed her example; yet crimes were not multiplied by this humanity.† Inspired by the profound reasoning of Beccaria, Leopold, Grand Duke of Tuscany, abolished death punishment altogether, and with what result? He is the best authority on the subject; having abundantly tested the effect of the change, he thus, in 1786, announces it, "With the utmost satisfaction to our paternal feelings, we have at length perceived that the mitigation of punishment, joined to a most scrupulous attention to prevent crimes, and also a great dispatch in the trials, together with a certainty of punishment to real delinquents, has, instead of increasing the number of crimes, considerably diminished that of smaller ones, and rendered those of an atrocious nature very rare." Such has been the result, the positive result of this humane legislative experiment. Franklin has strengthened it by a striking comparative illustration, drawn from a neighbouring State. It is conclusive. "In Tuscany," says he, "where murder was not punished with death, only five had been committed in twenty years; while in Rome, where that punishment had been inflicted with great pomp and parade, sixty murders were committed in the short space of three

* Charge to the Grand Jury of Bombay, 1811.

† Voltaire on Beccaria.

months!" He adds it as remarkable, that the manners, principles and religion of the inhabitants of Tuscany and of Rome were exactly the same; so that it would seem as if the abolition of death alone, as a punishment for murder, produced this difference in the moral character of the two nations.—And now, with these indisputable facts before us, let us ask ourselves whether the lives of Englishmen have become less precious than those of Russians, Italians, and Americans? Of what use have been these miserable enactments? or rather, what calamities have they not caused! What misery have they not occasioned! what blood have they not shed! what perjuries have they not produced! what guilt have they not sheltered and protected! And all for what?—that society might be safe. Then the blood of mankind has been vilely squandered, for never has England lived more securely from all these offences than since she ceased to live beneath the shadow of "the cursed tree."

PART II.

WHEN the Father of all evil sought to ensnare the Lord and Master of the world within his toils, *he quoted scripture.* He is still at work and fills the minds of good and pious men with the preposterous paradox, that the blessed book of life contains a death injunction—an injunction coeval with the deluge and binding upon Christians. Now, if this be so in truth, all speculation ceases—obedience becomes a duty. Let us examine then the question with all the reverence which befits so serious an enquiry and an authority so sacred.

The passage in the Bible on which the anti-abolitionists rely is to be found in Genesis,* the words are, "Whoso sheddeth man's blood, by man shall his blood be shed." This, they say, is a command transmitted to all mankind, through Noah, on his disembarkation from the ark. We contend, on the contrary, that it is no command at all—it may be prophetic—it may be denunciatory, but there is nothing imperative about it. A penal injunction should be free from all obscurity—coming from such a source, there could be no doubt attached to it; is this then clear? Does it mean murder, or does it mean homicide, or does it mean both? there is no qualification in the passage, and blood is shed in both.

We appeal to the judicial authorities of the land to point out one word in this passage as it stands, which will not apply to homicide as much as to murder. It is all very well for men who have been saturated with this error in their childhood, to cling to it in their old age, and clamour down all contradiction; but assertion, howsoever vehement, is not proof, and this is far too grave a matter to be thus summarily dismissed. A penal law ought to be specific, clearly defining the offence and then prescribing the punishment. The great legislator of the Jews was thoroughly aware of this; nothing could be more precise and clear than the penal provisions of the Levitical code and nothing more mandatory than its inflictions; for instance:—

> "He that smiteth his father or his mother, *shall surely be put to death.*"
>
> "He that stealeth a man and selleth him, or if he be found in his hand, *he shall surely be put to death.*"
>
> "He that curseth his father or his mother, *shall surely be put to death.*†

* Chapter ix. 4—6.

† Exodus xxi. 15—17.

There is no room for doubt or cavil here, no such vague phrase as—"whoso sheddeth man's blood by man shall his blood be shed," though the shedding of that blood may be comparatively venial, may be the effect of accident or self-defence or misadventure,—or may have been committed in the heat of blood, which even *our* sanguinary laws did not make a capital offence. If it meant murder, and murder only, it should have said so; and it would have said so, were it intended to have been mandatory. If it meant homicide also, are the anti-abolitionists prepared to abide by it? Perhaps many of them are—between some cases of homicide and murder the partition is but thin—a far worse offence than stealing to the amount of five shillings in a shop; and, as we have seen, they hanged for that. In the verse immediately preceding we find, "And surely your blood of your lives will I require; at the hand of every beast will I require it and at the hand of man." Are we then to shed the blood of the beast following nature's instinct and unconscious of evil? Most certainly we are if this is mandatory: observe the reason given for this; because man was made in God's image! So is the murderer, so is the executioner—where is it to end?

The fact seems to be that in the almost depopulation of the earth consequent on the deluge, this was a solemn monition for the protection of human life, and its meaning ceased with the necessity which called for it. That this must have been so is demonstrable from the circumstance, that Moses himself committed a murder, and King David an atrocious one, and their blood remained unshed. What answer can there be to this? But did the Jewish legislator who penned this passage, deem it either imperative or permanent? He could not have done so, for not only does he draw a clear distinction between murder and manslaughter, but where death having ensued from the act of the beast, he permits a money ransom, when by his own

law, life was forfeited.* In the antediluvian world we have but two recorded murders; doubtless, in that wicked world, there must have been many more.

The first murderer was Cain—the first being, born of woman, stained the young earth with the first human blood—and that blood was the blood of a brother! The crime assumed a giant maturity at the very moment of its birth; it defied time or atrocity to exaggerate it: it was not only a murder, but a fratricide—committed on the very threshold of the altar, the blood of the sacrifice and of the murdered, mingling.† This was indeed a murder "instigated by the devil"—the offspring of envy and malice, without any provocation; yet Cain's blood was unshed,—the Almighty prohibited its being shed. "Whoever slayeth Cain," said the LORD, "vengeance shall be taken on him seven-fold. And the LORD set a mark upon Cain, lest any finding him should kill him." True, it was denounced against him, "A fugitive and a vagabond shalt thou be in the earth." And yet, we find him withdrawing from the sacred presence into "the land of Nod, on the East of Eden," having a numerous posterity and permitted to build a city; "he builded a city and called the name of the city after the name of his son, Enoch."‡

The second, and only other recorded antediluvian murder, was that by Lamech, fifth in descent from Cain, and he seems to have pleaded provocation, and to have argued from his progenitor's precedent that his life was in no danger. "I have," said he to his wives, Adah and Zillah, "slain a man to my wounding, and a young man to my hurt. If Cain shall be

* "If the ox were wont to push with his horn in time past, and it hath been testified to his owner, and he hath not kept him in, but that he hath killed a man or a woman; the ox shall be stoned, and his owner also shall be put to death.

"If there be laid on him a sum of money, then he shall give for the ransom of his life whatsoever is laid upon him."—Exodus xxi 29, 30.

† Abel offered the firstlings of his flock. ‡ Genesis iv. 17.

avenged seven-fold, truly Lamech seventy and seven-fold." We do not read of Lamech's life having been taken, nor is there in the sacred narrative of the years before the flood, one single instance of death having ensued on the "shedding of man's blood." Yet, that blood had been shed, and that abundantly, is more than probable, as we find God assigning to Noah the "violence" of mankind, as one of his provocations to their destruction. "And God said unto Noah, the end of all flesh is come before me; for *the earth is filled with violence* through them; and behold, I will destroy them with the earth."*

But adverting to this Noachid passage, we may not dismiss thus lightly, the remarkable cases of Moses and David, as they appear to us decisive of the question; they even seem to stand forth, as it were, ostentatiously, in denial of the supposed mandate. The crime of Moses was not the result of personal provocation: "he spied an Egyptian smiting a Hebrew, one of his brethren," and he killed him. There was no heat of blood. It was done deliberately, craftily, and with a very special regard to his own security: "He looked this way and that way, and *when he saw that there was no man,* he slew the Egyptian and *hid him in the sand.*"† Now had the monition to Noah been a mandate, what was it to him who saw him? the All-seeing eye, at all events was on him, and the awful fiat could not have been evaded. But his caution availed not; he *was* seen by two of his own countrymen who reproached him with the murder, and he fled; Pharoah sought to slay him—no difficult matter if aided by God's decree: but even Pharoah could not slay him, and he lived to defy and humble this very Pharoah on his throne, and to die peacefully in the land of Moab at the ripe age of one hundred and twenty years; yet, even then, "his eye was not dim, nor his natural force abated." From his death-girt cradle, to his rest in Moab, this man was the favoured of the Lord—

* Genesis vi. 13. † Exod. ii. 11, 12.

the chosen leader of the chosen people, the inspired bearer of God's will to Israel—her light, her guide, her deliverer from bondage, her lawgiver, her prophet—whom "the Lord knew face to face:"—yet this very man—over whom a nation "wept for thirty days," and whose name that nation clings to still, almost the solitary relic of all she loved, and prized, and venerated—shed the blood of man, and his own remained unshed.

The murder by David is even more remarkable, not merely for the absence of extenuation, but for its superlative and unsurpassable atrocity. The story is soon told. Having committed adultery (a capital offence) with the wife of one of his officers, he sent him to be slain in battle, taking good care that his death should be assured; nay more, by a refinement upon cruelty and treachery combined, he made his fated and confiding victim the unconscious bearer of his own death warrant. "And David wrote a letter to Joab,* and sent it by the hand of Uriah: and he wrote in the letter, saying, Set ye Uriah in the fore-front of the hottest battle and retire ye from him, that he may be smitten and die." The order was but too literally obeyed, and the anointed adulterer sinned without inconvenience. Yet, this David was, from a shepherd boy, raised to be king over Israel, and he reigned forty years, and was a man of piety, as recorded by the Scriptures. However, the same sacred book convicts him of this most sinful murder, and records that "he was forgiven." True, he was rebuked, and punished, and repented —rebuked by Nathan, in a parable, bold as it was beautiful— true, the child of his adultery was smitten unto death; but, the miscalled mandate remained dormant—the blood of David was unshed. Alas, is there not something almost akin to blasphemy, in thus imputing to Eternal Wisdom an edict contradicted by its acts?

These instances by no means stand alone; they are selected

* 2 Samuel xi. 14, 15.

chiefly from the fame of the offenders. There is the murder of Eglon, king of Moab, by Ehud, while affecting to deliver to him a message from the Almighty.* There was also the murder of Sisera† by Jael, and many others—if the foregoing were not sufficient for our purpose. So far, indeed, was Jael from reproach, that she became a theme for panegyric. The song of Deborah and Barak thus invokes the murderess—"*Blessed* above women shall Jael the wife of Heber the Kenite be, blessed shall she be above women in the tent,"—and then, with horrible minuteness, it details the murder. "She put her hand to the nail, and her right hand to the workmen's hammer, and with the hammer she smote Sisera; she smote off his head, when she had pierced and stricken through his temples." One of the beatitudes of this exploit, omitted in the song, but recorded in the history, is, that when it was performed, "Sisera was fast asleep and weary."

It will be difficult indeed in the presence of such facts, successfully to contend that this much-cited passage was meant to convey a mandate. Many eminent divines do not think it was, and names high in philosophy agree with them. Hear one of the loftiest. "This passage," says Doctor Franklin, "has been supposed to imply that blood could only be expiated by blood. But I am disposed to believe with a late commentator on this text of Scripture, that it is rather a prediction than a law. The language of it is simply, that such is the folly and depravity of man, that murder, in every age, shall beget murder. Laws, therefore, which inflict death for murder, are, in my opinion, as unchristian as those which justify or tolerate revenge; for the obligations of christianity upon individuals, to promote repentance, to forgive injuries, and to discharge the duties of universal‡ benevolence, are equally binding upon states." The

* Judges iii. 20, 21. † Judges iv. 21; v. 24, 26.

‡ Inquiry upon Public Punishments.

commentator to whom Franklin alludes, is the Rev. William Turner,* who gives a natural and rational exposition of the passage. "To me," says he, "I must confess it appears to contain nothing more than a declaration of what will generally happen; and in this view, to stand exactly upon the same ground with such passages as the following:—'He that leadeth into captivity, shall go into captivity.'—'All they that take the sword, shall perish with the sword.' The form of expression is precisely the same in each of these texts; why then may they not be all interpreted in the same manner, and considered, not as commands but as denunciations? And if so, the magistrate will no more be bound by the text in Genesis to punish murder with death,—than he will by the text in the Revelations to sell every Guinea captain to our West India planters."

But after all, is it certain that this passage has been correctly translated from the original? The most learned scholars differ upon this subject. A most respectable authority† undertakes to state that "no version of the Bible prior to the fifth century contains the words 'by man,'" in the disputed passage, but "that Scripture itself has been interpolated to suit the purposes of the state." Be this as it may, it is an unquestionable fact that of the original as it now stands, five different versions have been given by five grave and venerable authorities, all omitting the important words 'by man.' We quote from a pamphlet by the Rev. Henry Christmas, who has examined the religious bearing of the question with the learning and in the spirit of a truly christian minister:—

"It is doubtful whether our version does give the exact sense of the passage, or whether the original will *bear* the translation [thus] given it. The great Calmet translated the verse thus:—

'*Quiconque aura répandu le sang humain* SERA PUNI *par l'effusion de son propre sang.*'

* See Memoirs of the Manchester Literary and Philosophical Society, vol. ii. p. 309, —Essay read, March 24, 1784. † Eclectic Review, July, 1849.

"In this version the words in capitals are his own interpolation.

"John Frederic Ostervald, on the other hand, renders it—

'Qui aura répandu le sang de l'homme dans l'homme, son sang sera répandu.'

"This is as nearly literal as can be.

"The Vulgate has

'Quicumque effuderit humanum sanguinem, fudetur sanguis illius.'

"The Septuagint has

'Ο ἐκχέων αἷμα ἀνθρώπου, ἀντὶ του αἵματος αὐτου ἐκχυθήσεται.

"The Spanish version of Scio gives us,

'Todo el que derramare sangre humana, sera derramada su sangre.'

"To these we may add Wycliffe, who renders the passage,

'Whosoeure sheddyth out manne's bloode, hys bloode schall be shedde.'

"Thus there are five important versions, to which might easily be added many of less note, which altogether reject the words, '*by man*,' in the second member of the sentence.

"On the other hand, Cranmer, Tonstall and Ridley, Coverdale, Matthew, Beza, and the Bishops, interpolate the words, '*by man*.'

"In this agree Luther and Giovanni Diodati.

"The Chaldee has a curious gloss: it may be translated,

'Whoso sheddeth man's blood before men—that is, before witnesses—shall by the sentence of the judge be exposed to the same pain.'

"The Rabbis generally understand it,

'Whoso sheddeth man's blood by means of false witnesses, shall suffer the same penalty which has been unjustly inflicted by his means.'

"The varieties thus given will suffice to show that the passage is not one on which we should depend for the continuance of so terrible an institution as that of capital punishments."*

That the conclusion to which Mr. Christmas comes, is, at least moderate and reasonable, we think, few will doubt. But there is one consequence deducible from the construction given to this passage by our opponents, to which we would call particular attention. Suppose we concede to them, in its fullest extent, all that they require. Suppose we admit this to be a God-given degree to mankind—communicated directly by the Deity himself, as mandatory as they would have it, universal in its application, binding alike, as such a mandate must be, on all ranks and classes and conditions of society. Suppose we yield further still to their construction, and grant that the words "whoso sheddeth man's blood, by man shall his blood be shed," exclude homicide, and mean murder only—so be it—and being so, *what becomes of the Sovereign's prerogative?* The moment the fatal word is heard from the jury-box, the convict's fate is sealed irrevocably. God's awful mandate—eternal, final, irreversible—has gone forth, and not all earth's authority, neither king, nor parliament, nor conclave, nor all collectively can weigh a feather in the scale against it. This must be the inevitable result, if this passage be mandatory, and if it means murder.

Next comes the question, did not the Old Testament ordain death punishment? No doubt it did. But what is that to us? What have we to say to the ordinance enjoined by the Old Testament? Just as much as we have to the ordinances of Confucius. It is positively a waste of time to argue it. Very able men in our own day have squandered industry, and genius, and learning, in setting a question at rest which really never should have been a question at all. But settled it they

* Capital Punishments unsanctioned by the Gospel. By the Rev. Henry Christmas, M.A., F.R.S., &c.—1846. Gilpin: London.

have. The Jewish people were set apart for a purpose, and that purpose has been effected. The whole scope and object of their system was, by type and ceremonial, and sacrifice and prophecy, to herald in the advent of our Saviour. That once accomplished, the system was at an end. The Mosaic dispensation and the Levitical code, framed for the exigencies of a turbulent, vindictive, hard-hearted, and idolatrous race, are gone together. Such laws are not only inoperative upon christians, but they are repugnant to the pure spirit of Christianity itself. They prescribe death for the murderer, no doubt; but so they do for the slave-dealer, and the adulterer, and the witch, and the blasphemer, and the sabbath-breaker. They enact, too, the savage principle of retaliation—'eye for eye, tooth for tooth; as he hath caused a blemish in a man so shall it be done to him again.' This was a system, doubtless, suited to a barbarous age and an unruly nation. It must have been, being with God's permission; but by the same fiat it has ceased. Are we ready to revive it? Is the fiercest of our opponents prepared to submit to a British parliament a bill punishing adultery with death, or a humane proposal to draw the teeth, or gouge out the eyes of a fellow creature? No! but he will retain the penalty for murder. By what authority? By what warrant does he pick and cull out of a connected code the fragment that suits him, and reject that which does not? Oh, but he finds a mandate against murder in the decalogue, drawn by the Deity, and addressed not to the Jew merely, but to all mankind. He truly does, and he finds in the same decalogue, by the same finger as 'Thou shalt not kill,'—'Thou shalt not steal,' 'Thou shalt not commit adultery;' but where does he find a penalty in the decalogue assigned to the breach of any of its commandments?—above all, the penalty of death? And is man to mend God's decalogue, and annex to its violation his own arbitrary, and it may be, sinful punishments? The decalogue, therefore, gives no warrant whatever

for the infliction of death penalty by man. The Levitical law does—but that code was administered under the immediate supervision of the Almighty. The system was a pure theocracy —it could not err, and accordingly we do not read of a single innocent life having been sacrificed mistakenly, under form of law. Not so, alas, as we shall find hereafter, under the government of erring man.

In stating this we have been misconceived as asserting that innocence never suffered. Such was not our intention. Our meaning was, that we could find no case where, as in human ministration, life was sacrificed by pure-minded men, misled by circumstance, plausible but deceptive. Doubtlessly, instances may be found under the theocracy, of guiltless men having suffered—not however according to law, but in wicked and direct contravention of law. By foul contrivances—by subornation—by perjury—by packed tribunals—by corrupted judges. Such cases come not within our category, no more than do the murders perpetrated by Jeffries during his Western assize. We refer to cases, not of intention, but of error—where accuser, witness, judge, were all unimpeachable and all mistaken. An incident has been cited from the Book of Kings of which we cannot admit the application. Naboth, the Ezreelite, from religious motives, refused to yield up his vineyard to Ahab, the king. Jezebel, his wicked wife, now and henceforth the synonyme of infamy, had Naboth murdered, in mockery of law. She had Naboth arraigned as a blasphemer against God and a reviler of his sovereign! To insure success she forged the king's name, tutored the judges, suborned the witnesses, the 'men of Belial,' and by this vile instrumentality she murdered Naboth and usurped his vineyard. It was no trial—it was no mistake. It was a murderous conspiracy, and the conspirators were, the king, the queen, the witnesses, and the judges! This was no case where the prosecutors were pure—where the witnesses were truthful—where the tribunal was upright—and where the con-

viction was honest, inevitable, and mistaken. It was the reverse of this, yet it was all permitted, but permitted by Him who could immeasurably compensate the sufferer. But why permitted? Daring inquisitor! interrogate Him whose mysterious wisdom permits the plague, the famine, the hurricane, and the earthquake? But we know He proclaimed to mankind that from its inception, the whole iniquity lay bare before His eye, and so, the dogs licked up the blood of Jezebel, and 'Ahab's house was made as the house of Jeroboam.'*

All now however has undergone a change. God no longer holds personal communion with his creature. The whole Jewish economy is vanished—gone, with all its marvels, its glory and its crime, its sublime ceremonial and denounced idolatries—gone, with its ark and sword and sceptre, its gorgeous worship and its regal pomp—gone, without a solitary vestige left, save the living miracle of its scattered race—the outcasts of earth rather than its inhabitants—without throne, or temple, or altar, or domicile, or country. We renounce its laws, we repudiate its example, and bow down before, what they so impiously disdained, the bright advent of a holier dispensation. Nor are we disposed to undervalue the precious volume they have given to us; we can well appreciate its beautiful simplicity, its lucid narrative, its sublime poetry, its varied imagery, its historic lore, its wild, solemn, awe-striking inspiration. But above all, we can venerate the types, and miracles, and prophecies, and mysteries—mysteries no longer—which foretold, elucidated, and confirmed the Gospel revelation. We cannot, nevertheless, for a moment admit that its laws are obligatory on the christian world. 'God, who at sundry times and in divers manners spake, in time past, unto the fathers by the prophets, hath in these last days spoken unto us by his Son.' And what has that Son said to us? Has he not, in express words, abolished the whole code of Moses? Has he not denounced the vindictive

* 1 Kings, xxi. 9—23. and 2 Kings, ix. 36.

principle of retaliation, and substituted that of mercy and forgiveness? Where do we find in that blessed sermon on the mount, a word which breathes not love and charity? After promulgating the divine beatitudes, see how he speaks of the law he was superseding—"Ye have heard that it hath been said, 'An eye for an eye, and a tooth for a tooth;' but I say unto you, That ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also."

So much for the Levitical law. How of the commandments? "Ye have heard that it hath been said by them of old time, 'Thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths': but I say unto you, Swear not at all." Again,—and we especially recommend this passage to all who whimsically apportion capital punishment to the violator of the sixth commandment, though, by the same warrant they might affix it to the violation of every other injunction of the decalogue,—"Ye have heard that it was said by them of old time, 'Thou shalt not kill; and whosoever shall kill shall be in danger of the judgment.'"—Of what judgment? Of death, say the abettors of capital punishments, who choose to change the words, "Thou shalt not kill," as they are quoted by the Saviour,* and as they stand in King James's Bible, into "Thou shalt do no murder." Did the divine speaker so apprehend the words? "But I say unto you, that whosoever is angry with his brother without a cause, is in danger of the judgment." Will any man contend that for such a reason, those blessed lips could have denounced the penalty of death? Assuredly they could not; and there is not to the violation of any injunction in the decalogue a temporal penalty attached, unless indeed, it be to that of the Fifth, and even that, but by implication; and even then, to be inflicted by the Almighty.

The only instance of a capital offence having been brought under the cognizance of the Saviour, as recorded in the Gospel

* Matt. v. 21.

narrative, is that of the woman taken in adultery: "And the scribes and pharisees brought unto him a woman taken in adultery; and when they had set her in the midst, they say unto him, 'Master, this woman was taken in adultery, in the very act. Now, Moses in the law commanded us, that such should be stoned: but what sayest thou?'" This, we are told, "they said, tempting him," hoping that by his answer he would either usurp the Roman prerogative or abrogate the Jewish law, a dilemma in which their question was intended to involve him. The demeanour of the Mighty Being thus addressed, is most remarkable. At first, as it would seem, he appeared not to hear them. "Jesus stooped down and with his finger wrote on the ground." Now—had he chosen to countenance the cruelty of the ancient legislation—how easily might he have reconciled the Mosaic doctrine with the Roman authority, and thus set at nought their treacherous inquisition! But this he did not. By doing so, he must have ceded either to one or other, or to both conjointly, the power of death infliction.—And this he did not. Neither was he silent. His reply decided not the rival pretensions of Rome or Jerusalem, but it swept away the principle on which both were founded, the right—so far as Christianity was concerned—to take away human life. He refused any such principle his sanction, and he did so in language which, by announcing its only possible justification, proclaimed its assumption by mankind impossible. "He that is without sin among you, (said he,) let him first cast a stone at her." The sinners shrank away at once from the presence of the sinless—the only sinless. Be it remembered here that the question as put, challenged the recognition of the Jewish punishment by the Christian dispensation. Be it remembered also, that though Jesus saw the foul intent which lurked beneath the question, the bystanders could not, and so received his answer in its literal acceptation. The case stood thus:—Moses bids us shed this culprit's blood—Jesus, what sayest thou? And what said he?

Let him begin "who is without sin among you." Slay—was the mandate of the Mosaic dispensation. Slay not—is the more merciful admonition of the Christian. If power over human life is only given to the sinless, it must be the exclusive attribute of Heaven. Cæsar cannot claim that which belongs not to him—he never gave it, nor can he take it away—should he take it, he may err in doing so—and should he err, reparation is impossible. Power over life belongs to God alone; he gave it, he alone can take it, and he alone cannot err in taking it. Such, as it ever has appeared to us, is the fair inference deducible from this narrative, an inference drawn, in all humility, from its sweet accordance with the heavenly disposition of the Saviour. Nor does this inference involve either excuse for the offence or exculpation of the offender. While his mercy recoiled from a penal condemnation, the justice of his nature could not withhold reproof—"Go," said he to the poor, humbled, trembling creature, "go and sin no more." But here he paused. He gave no countenance to the shedding of her blood. How sinful man would exercise such a power, the past revealed to him in the fate of John the Baptist, and the future spake to him from the mournful Calvary. So he gave it not.

An authority for the death-infliction has been deduced from the New Testament in the instance of Ananias and Sapphira, and to give the precedent the greater weight, it has been cited as episcopal. We confess to not seeing its applicability, and think it applies rather the other way. The guilt, for guilt it unquestionably was, was not denounced as criminal by human legislation, and of course was not cognizable by any human code. Peter declared specifically what it was. He called it a "lie to the Holy Ghost"—the most awful of all scriptural offences—an offence not only penal, but inexpiable. It was a deliberate insult to that unspeakable Majesty, even to breathe against whom was a blasphemy not to be forgiven, "neither in this world, neither in the world to come." The Blessed Saviour

himself declared it to be more unpardonable than even to "speak against the Son of Man." There was nothing whatever human in the incident to constitute it a precedent for humanity. The offence was against Heaven, and by Heaven was the forfeiture inflicted. As its detection was not by man, but by Omniscience, so its punishment was not by man, but by Omnipotence. It is significant enough that Saint Peter, inspired apostle as he was, though commissioned to proclaim the crime, never ventured to pronounce the sentence. The very mode of the punishment, impracticable by man, seems to indicate the denial of its delegation. The edict was divine—the condemnation voiceless—the death-blow invisible. It was all of God. Human nature had neither act nor part in it. Had it been intended, under the new-born dispensation, to arm man with this authority, here was indeed an opportunity of announcing it. But search as we may the Gospel narrative, amid all the sin and crime and cruelty and suffering to which the apostles were exposed, though we meet many instances of life restored, we seek in vain for one of death inflicted.

Having failed in their scrutiny of the gospels themselves to find either fact or sentiment favouring death infliction, the anti-abolitionists ground their justification on a dissevered portion of one solitary passage in Saint Paul's Epistle to the Romans;—a very strained construction and a very far-fetched inference. The words are these:—[the ruler] "beareth not the sword in vain."* The word, "sword," say they, means authority *over life*. We say, it means no such thing, but is a merely figurative expression, symbolizing authority in the abstract. Saint Paul exhorts the church to obey the ruling powers, reminding it that the law furnishes them with the means of *enforcing* that obedience. That is all he says, and all he meant to say. He specifies no particular mode of punishment, and it seems clear he could not have so intended. He is recounting to them the duties they

* Romans xiii. 4.

are to fulfil under peril of the consequences. He is admonishing them not to do evil:—"But if thou *do that which is evil*, be afraid; for he beareth not the sword in vain:"....."Render therefore (he presently adds), to all their dues: tribute to whom tribute—custom to whom custom—fear to whom fear—honour to whom honour." Does he mean that if they do not, they are to be put to death? Is it seriously argued that the great apostle enjoined this on the early christians and enjoined it in perpetuity! Are the indefinite words, "doing evil" meant to imply capital punishment as a consequence! Or, is *any* infraction of the laws the meaning of the passage? If this be so, he that pilfers, or reviles, or is intoxicated, "does evil" and must die for it.—But before our opponents burrowed these two lines out of the thirteenth Romans, we presume they had perused Chapter xii.* of the same Epistle, where Saint Paul quotes this plain and awful admonition—"VENGEANCE IS MINE; I WILL REPAY, SAITH THE LORD." Now, as these sentences are only just five verses apart, we leave it to our opponents to place them side by side and, if they can, to reconcile the simple meaning of the one with the forced construction they would have us put upon the other.

Since the first edition was printed, we have received a singularly interesting communication. It is a report of the proceedings of the parliament of Otaheite on the subject of death punishment. This people, be it remembered, were a nation of cannibals at not a very distant period. They became converts to christianity in the commencement of this century, and made such progress in their social improvement as to found for themselves a constitution. It was on the 24th of February, 1824, that they convened a native assembly for the purpose of devising their system of laws, and a debate of four days' duration was terminated by a unanimous vote excluding death punishment from the code of Otaheite.† The house of meeting was their

* Verse 19. † Tyerman and Bennett's Journal, v. ii., p. 80.

house of worship, and the first proposition submitted to them was, whether death or banishment should be the punishment for murder? A speaker declared the crime ought to be capital, because it was capital in England, and having received from that country the precious gift of christianity, it was their duty to adopt the laws. To this a high personage replied, that England *punished many crimes with death, to which no christian legislature should assent;* and he declared it as his fixed opinion that such an example as that, was not one for imitation—an opinion which seemed to find favour with the assembly. After some pause, however, a chief arose, noble and stately in demeanour and clearly high in general estimation. "It is not," said he, "the law of England that should guide us, good though it may be. We ought to be guided by the Bible. Now our missionary stated to us a few days ago, that the Bible says 'Whoso sheddeth man's blood, by man shall his blood be shed;' and that such was the reason for the law of England. I think, therefore, not because it is the law of England, but because the Bible orders it, that we should punish the murderer with death." After this the debate proceeded, when at length a chief arose, named Tati, whose rich native dress bespoke high rank and whose movement commanded instant deference. "Perhaps (he proceeded) some of you may be surprised that I who am the first chief here, and next to the royal family in rank, should have held my peace so long. I wished to hear what my brethren would say, that I might gather what thoughts had grown up in their breasts on this great question. I am glad that I have done so, as I have been instructed. Now with him who says we should punish with death because the laws of England do so, I agree not, because he goes too far. Nor do I agree with him who quotes the scripture, because I think he also goes too far. The Bible, he says, is our perfect guide. It is. But what does the scripture mean, 'He who sheddeth man's blood, by man shall his blood be

shed'? Does not this go so far that we cannot follow it, any more than we can follow the laws of England, all the way? For instance, I am Tati. I am a Judge; a man is convicted before me: he has shed blood; I order him to be put to death: I shed his blood; then who shall shed mine? Here, because I cannot go so far, I must stop. This cannot be the meaning of those words. But, perhaps, since many of the laws of the Old Testament were thrown down by the Lord Jesus Christ and only some kept standing upright; perhaps I say, this is one of those which were thrown down. However, as I am ignorant, some one else will show me, that in the New Testament our Saviour or his apostles have said the same thing concerning him that sheddeth man's blood as is said in the Old Testament. Shew me this in the New Testament, and then it must be our guide." After him rose Pati, a chief and a Judge of Eimeo, and one of the most interesting members of the assembly. He had been the high priest of Oro, and was the first Otaheitan who, at the hazard of his life, abjured idolatry. "My breast," he exclaimed, "is full of thought and delight and surprise. When I look around at this House of God in which we are assembled, and *consider who we are* that take sweet counsel here, it is to me all a thing of amazement, and makes glad my heart. Tati has settled the question; for is it not the Gospel which is to be our guide? And who can find directions there for putting to death? I know many passages which forbid, but none which commands to kill. Another thought arises in my breast. Laws, to punish those that commit crime, are good for us. But, tell me, why do christians punish? Is it because we are angry, and have pleasure in causing pain? Is it because we love revenge, *as we did when we were heathens?* None of these:—christians do not love revenge; christians must not be angry. They cannot have pleasure in causing pain. Christians therefore do not punish for these. Is it not rather that by the suffering which is inflicted we may prevent the criminal

from repeating his crime, and frighten others from committing it? Well, then, does not every body know that it would be a greater punishment to be banished for ever from Tahiti, to a desolate island, than just *in a moment* to be put to death?"

Such were the wise and noble sentiments of one, who but a few years before had wandered, a savage, if not worse, amid the wilds of Otaheite? What could he have said better, had he made Beccaria the study of his life? When this high chief had finished, one of the *taati rii*, as they are called, which means the commoners or representatives of a district, next presented himself. He was heard as respectfully as had been those of a superior dignity who preceded him. "I stand up," said he, "because no one else does, and because pleasant thoughts are growing in my bosom. Perhaps every thing good and necessary has been already spoken by the chiefs; yet, as we are not met to adopt this law or that law because one great man or another recommends it, but as we, the taati rii, just the same as the chiefs, are to throw all our thoughts together; that out of the whole heap the meeting may make those to stand upright which are best, whencesoever they come; this is my thought. All that Tati said was good; but he did not mention that one reason for punishing, (as a missionary told us, when he was reading the law to us in private,) is to make the offender good again, if possible. Now, if we kill a murderer, how can we make him better? But, if he be sent to a desolate island, where he is all solitary, and compelled to think for himself, it may please God to make the bad things in his heart to die, and good things to grow there. But if we kill him, where will his soul go?"

The rude council of these children of the woods seems to us to breathe the very soul of christianity. Callous civilization will deride their humanity, and intolerance condemn their doctrine; yet, it may be perhaps, that both would be the wiser and the better for a lesson from the ex-high priest of Oro. Poor

and unsophisticated people! long may they possess the gospel in its simplicity, pure as the great Hebrew convert preached it! so will they find in it their youth's preceptor, their manhood's guide, and their old age's anchor. And oh, for them or for their island, may the day never come, when martyrdom shall blot its page with blood, or Inquisitions provide a torch by which to read it!

It has been remarked before, that in the earlier ages, when christianity was in its freshness on the earth, we find it practically opposed to the infliction of death punishment. "Up to the fifth century," says Schlegel, in a note upon Mosheim's History, (vol. i. 466,) "it was the current opinion that christians could not bear a part in the execution of criminals." In Milman's Church History, we read, (vol. ii. 82,) that Julian removed christians from the office of Prefect because they would not put criminals to death; and in the same work (vol. iii. 457), we learn that St. Augustine denounced the destruction of criminals in the circus, and complained of the practice as adding to the ferocity of the people.* These historic facts are quite in accordance with the christian spirit and the christian doctrine; quite in accordance with that blessed Gospel which breathes mercy from the beginning to the end; quite in accordance with every word and act of Him, who, while reproving, pardoned.† So far from Christ countenancing the death infliction, even for murder, his own dying supplication was the pardon of his murderers. Yet, under *judicial* forms, and a sanguinary code, was this monster murder plausibly committed. Surely, surely, the pure, and innocent, and sacred blood which stained Mount Calvary, should have been the last which earth's tribunals ever shed? But, alas, it was not—and many a scaffold's guiltless martyr has since told erring man, that in assuming God's prerogative—"he knows not what he does."

* Eclectic Review, July, 1849. † John viii. 11.

PART III.

Has man a right by human legislation, to deprive man of life? If he has not, capital punishments fall to the ground. We say he has not—we say, with Beccaria, that no man, possesses a right over his own life, and, not possessing it himself, how can he delegate it to another! Suicide is not only a crime which nature abhors, but it is a felony by our English law. It is clear, therefore, both in law and morals, man's life is not at man's disposal.

By what authority does any man or any community of men assume power over their fellows? By common agreement—by what is called the social compact, and by it alone; by it, he delegated to others, certain portions of his individual rights; in accepting the control of the laws, he sacrificed a portion of his liberty—in submitting to taxation, to a certain extent, he conceded a portion of his property; and thus by the formation of communities, and the establishment of civil government, he was secured from the anarchy of a state of nature. These, for such a purpose, were most wise and salutary sacrifices; but he could go no farther, he could not surrender any power over that, over which he has himself no power.

Man's life is not his own—our own law says it is not his own—it is a loan from the Almighty. It is not a gift, it is a loan, to be revoked at will, and at any moment; to the despot in his purple, to the pauper in his rags, it is alike a loan, and the fellow worms must alike account for the use which they have made of it.

There is no instance in the world's annals, in which capital punishments were authorized by Heaven, save under the Levitical code, and that code was administered under the immediate eye of The INFALLIBLE. It is not for us, poor erring creatures, to scan the enactments of that mysterious system, with penalties apparently so disproportioned to the offences. It was doubtless part of a supernatural economy which it is not ours to scan, or scanning, to comprehend. These sanguinary enactments, operative upon crime, may have had a significance yet unrevealable to mortals. They may have been meant as expiatory sacrifices, prefiguring and typical of the awful final one which closed, on Mount Calvary, the reign of blood. Such are our views on this all-important subject. Nor are they ours alone: great and good names might be adduced in their support; we have already cited the opinions of Beccaria, whose invaluable treatise is co-extensive with civilization. So we say, as has been powerfully argued by Sir Thomas More,*—"God commandeth us that we should not kill, and, if a man would understand killing by this commandment of God to be forbidden after no larger wise than man's constitutions define killing to be lawful; then why may it not likewise by man's constitutions be determined after what sort, whoredom, fornication and perjury may be lawful? For, whereas, by the permission of God, *no man neither hath power to kill neither himself nor yet any other man*—then, if a law made by the consent of men concerning slaughter of men, ought to be of such strength, force and virtue that they, which—contrary to the commandment of God—have killed those whom this constitution of man commanded to be killed, be clean, quit and exempt out of the bonds and danger of God's commandment; shall it not then, by this reason, follow that the power of God's commandments shall extend no further than man's laws doth define and permit? and so shall it come to pass that, in like manner, man's constitutions in all things shall

* Introductory Discourse to the Description of Utopia, Book i. 75.

determine how far the observation of all God's commandments shall extend. * * * Now you have heard the reasons why I think this punishment unlawful." It is true that the subject matter of the argument was theft, but, assuredly More's reasoning goes directly to the legality of the punishment in the abstract. We might add the authority of Mrs. Fry, whose angelic life was worn out in "doing good,"—who relinquished the leisure and luxuries of her station, and almost domesticated herself amid the dungeon's gloom,—the willing captive of her own benevolence,—reforming the crime and solacing the misery she found there—she ought to be a great authority, because an intelligent and daily witness of the frightful errors of a fallible tribunal. It was this sad experience which doubtless wrung from her the mournful exclamation, as death's agent, at man's daring mandate, hurried some youthful victim before her God, perhaps innocent, perhaps guilty, and if so, alas,—

> Cut off in the very blossoms of her sin,
> Unhousel'd—disappointed—unanel'd,
> No reck'ning made, but called to her account,
> With all her imperfections on her head—

"Is it for man to take the prerogative of the Almighty into his own hands?* Assuredly it is not, and perilous indeed is the position of the person who presumes to do so." So thought Mrs. Fry. So thought a still more consummate authority—an authority, practical as well as theoretical—one who has adorned the day in which we live, but who was intended "for all time." "We have no right," (says Lord Brougham, then Lord Chancellor,) "to shed a criminal's blood, because he has shed the blood of another man: we have no right in *reason* to do this: we have no warrant from *religion*. It is doubtless a great evil for a man to be murdered; but that, in reason, is no argument for inflicting death upon the murderer.†" And this, be it

* Life, vol. i. 267.

† Lords' Debates, September 6th, 1831.

observed, was a deliberate opinion pronounced by the head of the law, before the Peers of England. So thought also the great American*—a name dear to science, to humanity, and to freedom. "The power over human life is the sole prerogative of Him who gave it. Human laws, therefore, are in rebellion against this prerogative, when they transmit it to human hands." So thought another great American, John Quincey Adams, the friend of Washington, and one of his successors, as President of the United States. "I heartily wish and pray (says he,†) for the success of your efforts to promote the abolition of capital punishment, and, if you can shape the laws of the land to a disclaimer of the *right of government itself to take from any human being the life granted him by his Creator*, I would welcome it as the harbinger of a brighter day, when no individual of the race of man, shall ever lose his life by the act of another."

There is no part of the doctrine against capital punishments which has been more impugned than this. To be sure, no reason is given for impugning it, nor can there be if, as is demonstrable, death punishment is not, and never has been, a preventive of crime. A toss up of the nose, or a shake of the head, or a dogmatical denial, or a knowing asseveration of surprise that any man of sense should promulgate such opinions, is the compendious mode in which the question is disposed of. It seems to us that this logic is by no means satisfactory. It has indeed the advantage of being summary, and all the dignity which self-importance can confer. Such dissentients, however, might profitably compare themselves with their opponents. A little reflection might suggest a doubt whether the recorded judgments of the good and great—of More, and Franklin, and Bentham, and Brougham, and Beccaria, are to be thus dogmatically repudiated.

We have in addition, the testimony of able, practical men to

* Inquiry. † Letter to the National Society of Massachusetts, 1845.

the same effect. "In the course of my experience," says Mr. Harmer, a very high authority, "I have found that the punishment of death has no terror upon a common thief; indeed it is much more the subject of ridicule among them than of serious deliberation: the common expressions among them used to be 'Such a one is to be twisted;' and now it is, 'Such a one is to be top'd.' The certain approach of an ignominious death does not seem to operate upon them, for after the warrant has come down for their execution, I have seen them treat it with levity. I once saw a man for whom I was concerned, (the day before the execution,) and on my offering him condolence and expressing my sorrow at his situation, he replied with an air of indifference, 'Players at bowls must expect rubbers.' Another man I heard say, that 'It was only a few minutes, a kick and a struggle, and it was all over; and that if he was kept hanging more than an hour, he should leave directions for an action to be brought against the sheriffs.' The fate of one set of culprits, in some instances has no effect even on those who are next to be reported: they play at ball, and pass their jokes as if nothing was the matter. I mention these circumstances to shew what little fear common thieves entertain of capital punishments, and that so far from being arrested in their wicked courses by the distant possibility of its infliction, they are not even intimidated at its certainty; and the present numerous enactments to take away life appear to me wholly inefficacious."* So slight is the influence of this punishment individually.

But what effect does it exercise on the nation? this is a consideration which no civilized christian legislature can cast aside; the reformation of the ill-disposed is impeded by such spectacles. "These executions," says Mr. Forde, the ordinary of Newgate, in his letter to Bentham, "are of no avail either for punishing criminals or deterring others from the commission of crime;" and no one, from his position could be more qualified to form a

* Evidence, May 18, 1819.

judgment. But we need not retrogade to the days of Mr. Forde to prove their demoralizing, rather than reformatory effects.

Lord Nugent* mentions, that in May, 1840, a man named Thomas Templeman, was executed at Glasgow for the murder of his wife, and that pickpockets plied their trade under the gallows; at that time to be sure, a boy could not be hanged for stealing a pocket-handkerchief—a humane amendment had substituted transportation for life, and scores have been so transported: but, Barrington, the *facile princeps* of the profession, declares, that even when the offence was capital, the thieves selected the moment when the strangled man was swinging above them, as their happiest opportunity, because, they shrewdly argued, "everybody's eyes were on one person, and all were looking up." The late excellent Basil Montagu used to relate, that through the interest of the Duke of Portland, he obtained the respite of two unhappy men who were sentenced to death, at Huntingdon, in 1801, for sheep-stealing. By dint of great exertion he reached the place a short time before the hour appointed for the execution;—the streets were thronged with crowds who came to see *the show*, and, to his utter horror, the High Sheriff advised him to leave the town as speedily and as *privately* as he could, to avoid ill-treatment, from the disappointment he had occasioned!

A more frightful instance of this demoniac frenzy, so produced, we borrow from America. "After (says Mr. Livingstone†) the execution of Lechler had gratified the people about York and Lancaster with the spectacle of his death, and had produced its proper complement of homicide and other crimes, a poor wretch was condemned to suffer the same fate in another part of the State of Pennsylvania, where the people had not yet been indulged with such a spectacle. They therefore collected by thousands and tens of thousands. The victim was brought out. All the eyes in the living mass that surrounded the gibbet

* Speech at Newcastle-on-Tyne. † Introductory Report, p. 132.

were fixed on his countenance, and they waited, with strong desire, the expected signal for launching him into eternity. There was a delay. They grew impatient: it was prolonged, and they were outrageous; cries like those which preceded the tardy rising of the curtain in a theatre were heard. Impatient for the delight they expected in seeing a fellow-creature die, they raised a ferocious cry. But when it was at last announced that a reprieve had left them no hope of witnessing his agonies, their fury knew no bounds; and the poor maniac—for it was discovered that he was insane—was with difficulty snatched by the officers of justice from the fate which the most violent among them seemed determined to inflict." This most awful and humiliating instance of the degrading depth to which human nature may descend, occurred at a place called Orwigsburgh, in Pennsylvania, and Mr. Livingstone declares the picture by no means overcharged. The name of the rescued maniac was Zimmerman.

This sad list might be indefinitely lengthened, but such details, so mournfully humiliating, may not be dwelt on longer than is necessary; one instance more shall close the catalogue—it is, really, too appalling to be surpassed, and too much in point to be omitted—we give it on the authority of Mr. Dymond. On one occasion, when forgery was capital, a criminal had been executed at the Old Bailey, and his body had been placed at the disposal of his friends: his widow pursued his trade of forging £1 notes, and a young man sought her house, to purchase some; the police were hard in pursuit, and, to prevent discovery, she crammed the notes *into the mouth of the corpse*, and there the police officers found them.

During the last session of Parliament, a Committee of the House of Lords, moved for by a most eminent prelate, reported on the subject, after hearing evidence—and their report is quite conclusive—as to the policy of *public* executions. Now, we always supposed that publicity was the very essence of the

penalty, awing as it were, whole multitudes at once by the *terror of the example.* They knew not human nature who thus argued. Exhibitions such as these will never produce any other effect upon the feelings of mankind in general, save that of petrifying them; the evidence given before the Bishop of Oxford's Committee abundantly testifies to this.

The Venerable Archdeacon Bickersteth thus states that which passed under his own eyes, in the town of Shrewsbury, during the execution of Josiah Misters, convicted of an attempt to murder. "There was an unusually large attendance, not only of the inhabitants of the town, but of the country round. The whole scene was new to me, and very unexpected; the town was converted for the day into a fair—the country people flocked in, in their holiday dresses, and the whole town was a scene of drunkenness and debauchery of every kind. I had an opportunity of inquiring from some of the most respectable inhabitants, what was their own impression, and their opinion entirely coincided with my own, that the whole exhibition was calculated to be injurious to good morals, rather than otherwise. It was particularly remarked upon that occasion, that a very large number of children were present; children and females constituted the larger proportion of the attendance. The impression left by the execution was not one of seriousness, and it was impossible to make it so. I was anxious, before the day came, if possible, to use it as a day upon which some moral effects might be produced, but I found it quite in vain."

Respecting another case, the same reverend dignitary stated that, in answer to a letter which he had written to a respectable inhabitant of Shrewsbury, he was informed that the mining districts generally furnished the larger proportion of spectators; "They come out just as they would to *bull-baiting or a cock-fight;* and after the solemn scene is over, the day is invariably one of drunkenness, oaths, and disorder. About thirty years ago, a man, who had been a local sectarian preacher, was

executed at Shrewsbury—he had been convicted of the crime of murder on the most clear and undoubted evidence, yet, at the time of his execution, he was permitted to speak to the people, several thousands of whom were present, as usual. Having a powerful voice, which he exerted to the utmost, he was heard at a great distance, even as far as the gardens on the north side of the Abbey Foregate. In the course of his harangue he called out several times, 'I am going to glory, what shall I do for you? tell me what I shall do for you?' He then gave out a hymn, two lines at a time, which was sung by a portion of the throng, himself leading the singing; and at the conclusion the executioner performed his office. Surely such a scene could only have had one or other of two effects on the minds of the persons present—it must either have diminished their respect for the laws of man, or have weakened their fear of God."

Another witness, Mr. Hodgson, who had much experience, and was at the time of his examination, superintendent of the City of London police force, was on this subject thus interrogated:—

Q. Do you think, from your intercourse first of all with criminals, you can trace any effect, and if any, has it been good or bad, from their having witnessed public executions?

A. I can only speak generally in that respect: I should judge, in some measure, from what I see of the conduct of the spectators at the time.

Q. Will you state to the Committee any thing you have noticed of the kind?

A. All kinds of levity, jeering, laughing, hooting, whistling, even at the time the man is coming up. While he is still suffering, while he is struggling and his body writhing, there is all this noise going on; obscene expressions, any thing but the impression which people might imagine would be caused by the spectacle.

Q. Is the Committee to understand that your impression is, that the sight of a capital execution diminishes the awfulness of its effect upon that class?

A. It is, clearly.

Q. Would you say that was the conduct and bearing of the majority of the people present?

A. Most decidedly.

Q. Are not the majority of the persons present, generally, of the very lowest class?

A. They are.

Q. Would you apply that to the people who are looking out of the windows and from the housetops?

A. No; but they would not be the majority; they are generally of a more respectable class; mere curiosity brings them there, while the others, who form the mass of the people present, seem positively to enjoy the sight.

The Rev. Mr. Clay was asked this question by the Committee;—

Q. And your impression, as far as you have been able to observe, is that the sight is not deterring, but merely gratifies curiosity?

A. It is not deterring. I happened to read, within a few days, a fact which is on record—I am not sure whether it is in Mrs. Fry's book or not—upon the subject of deterring from crime; that a man having been executed for coining, his body was delivered up to his friends, and within a day or two some of those very friends were apprehended in the act of coining, the dead body being then in the house.

Captain Mayne, chief of the Shropshire constabulary, thus writes to the Right Reverend Chairman of the Committee:—"My own opinion is, that an execution is viewed much more in the light of a show than of an awful punishment; and in proof of this, I would mention, that on an occasion, in this town, (Shrewsbury) when one took place, the performance at the circus here was postponed for two hours, *in order to enable the people to witness both.*"

We have only extracted a small portion of the evidence which came before the Lords' committee, merely adding a few instances, the result of our own research. The committee came to an unanimous conclusion, founded on that evidence, and reported accordingly.

The reader will observe, that the point for their Lordships' deliberation, was the policy of "*public*" executions. That before us, is the propriety of their *total abolition*—and we have no hesitation in claiming this committee, on their own shewing as powerful though perhaps unconscious, advocates of our cause. A committee, including amongst its other eminent members, such names as those of the Bishop of Oxford, and Lord St. Leonards, is well worth contending for. We beg, however, not to be misunderstood; we would by no means attribute individual opinions to any of these noble Lords, which, for aught we know, they may or may not hold; but we fearlessly assert that their joint report and the evidence on which it is founded, contain conclusive arguments in favour of abolition.

We claim every line of it on behalf of the abolitionists. During many centuries, we have now persisted, year after year, in the infliction of this most awful punishment, taking man's life, stigmatizing his memory, involving his innocent orphans in his ruin, and hurrying himself before an offended God, without even time for a too requisite preparation.* And why has this been done? It has been done, as we are told—for the protection of society, by holding up the terror of the example. Of course, this is our only justification for the infliction of punishment at all; it is not intended for retaliation on the criminal—"Vengeance is mine," saith the Lord.—Well, is the object effected? Is the only legitimate purpose of punishment completed? Do men shrink back, aghast, from the spectacle, and return to their homes to contemplate its moral? Look again, say we to this report:—Their home is deserted for the public-house, the din of the "circus" alternates with the death-shriek — women — English women — English mothers, familiarize their offspring to the dying agonies which are to

* It was the custom until lately to execute murder convicts within forty-eight hours after their conviction: so they always tried them at the Old Bailey on the Friday, thus *humanely* giving them the benefit of the *dies non*.

delight their manhood—babes at the breast imbibe life's nutriment while death's work is doing—(it is all in the report)—gospel in hand, Christ's minister approaches,—he is unheard, if not derided,—the hangman holds high festival—the feelings of mankind are for the moment palsied, their hearts are hardened, their manners brutalized, their moral perceptions blunted, or suspended—all that softens, sanctifies, humanizes earth, vanishes from its surface—for miles and miles around the whole living mass becomes diseased and tainted—every healthy hamlet, catching the infection, rushes to the scene of blood as to "a show," while blasphemy, obscenity, drunkenness and crime celebrate their horrible saturnalia beneath the gallows. Advocate of blood! Terror-striker *by example!* Dwell upon this picture if you dare—its every feature will be found in the report, or in the documents annexed to it.

This abortive system of terror-striking by example, is, after all, but a trouble-saving expedient—the mere short-cut of lazy legislation. It is the stultified device of state empiricism to stay the plague by sacrificing the patient. No doubt, the Calcraft of the day profits largely by a system so reproductive. He is, and ever will be in abundant practice so long as a senseless legislation considers that the extermination of the criminal involves that of the crime. But repeated failure nothing daunts the penal experimentalist. He has tried his specific in every shape and form—in that of the stake, the axe, the thumb-screw, the gibbet, and the gallows. We believe there are some still amongst us who have seen human heads spiked above Temple Bar, and within memory, certainly, the raven has scented Execution-dock. With what effect? Murder doubtless is not what it was. It no longer stealthily crouches in the by-ways. It faces us boldly in the public streets. Armed with the garotte it stalks abroad through our familiar thoroughfares, or more relentless still, it smiles upon the victim and pours poison into the cup of hospitality. Life's forfeiture counts for nothing now,

unless all that charms and hallows and endears it, is mingled in the sacrifice. We much doubt whether within our own memories and within the same interval, crimes so daring, so crafty and so fiendish were so rife in England as within the last ten years.

At this, we marvel not. But ought not such a fact to startle our opponents? Are they quite sure that this much cherished fallacy may not produce an effect the very opposite of that intended? Is it quite clear that these blood-exhibitions may not, by familiarity, indurate men's nature? Or even more fatal still, may they not operate perniciously on the very classes they were expected to reform?

Government *by terror*, is neither safe, nor politic, nor by possibility, permanent:—Government *by reason* is the only system applicable to man. Proofs will be found abundant in history, at once illustrative and confirmatory, of our position. Let us take one from the nation nearest us—neither locality nor time can affect a purely abstract question—namely, the probable operation of a principle. Let us look then to France, in 1793, and what do we see there? A spectacle indeed, over which humanity mourns and religion weeps:—a shattered throne—a church in ruins—a guileless monarch, the most inoffensive of his race, mercilessly butchered a few months before his queen—a degraded, plundered, disavowed nobility—a ferocious rabble revelling in blood! What could have evoked a prodigy so portentous? Surely, misgovernment even in excess, need not have transformed a population into fiends! Nor did it, reader. The blind rulers, on whom this terrible reprisal fell, were themselves the cause of the unnatural transformation. Cruel laws, cruelly executed, produced, in the end, by process of repetition, their invariable effect. They infuriated the passions—they benumbed the feelings—they petrified the very heart, of the nation. Neither man nor communities were ever yet *improvised** into

* "Nemo repente fuit turpissimus."

iniquity. It is the work of ages—and ages of persevering perverseness they must have been, which thus imbruted a people naturally light-spirited and generous. And such in truth, these ages were. The finished and accomplished professors of the guillotine had all graduated in the Place de Greve. The imp was systematically educated into the demon. It sickens the soul to recall some of the punishments of the old regime. For instance, that of regicide. Take the case of Ravaillac. His crime was execrable—but still more so was the mode of his execution—it was enough to permanently *unhumanize* a people. Cruelty has, as yet, no epithet in its nomenclature adequately to designate it. Having undergone in his dungeon, tortures unspeakable to extort confession of confederacy, he was taken in a tumbril to the Place de Greve. They tore the flesh from his bones with red-hot pincers. They burned off his right hand with flaming brimstone. They poured molten lead and boiling oil and scalding pitch into his bleeding wounds; and they tied four horses to what remained of the macerated and still palpitating frame, to tear it into quarters. This having been vainly persevered in for an hour, the frenzied rabble finished his agony with their knives. And this mutilation of God's image was perpetrated by wretches shaped like men and calling themselves christians. But vengeance was greedy still. The christian men burned the corpse to ashes. Reader—shudder not. This was pure humanity!!—a wise "deterrent" to banish regicide from France for ever! And, the "deterrent" was as effectual as ever. Of the successors to Henry, Louis the 15th had an attempt made on his life, and the "bed of steel" improved on the "deterrent." Louis the 16th was murdered in the name of law. During the revolution, Barras, Danton, Robespierre, and all the several despots of the day, all died by violence. The Empire came, and attempts were made on the life of its great founder. The old monarchy was disinterred, and one of its royal scions fell beneath the dagger. The House of Orleans rose in the

ascendant, and Louis Philippe escaped the dagger of more than one Fieschi. Lo, again the Empire—and to a gracious Providence we owe it that Napoleon the Third still guarantees the peace of Europe and the prosperity of France. Such was the effect of the most frightful vengeance that ever fiends devised and kindred men were found to perpetrate. And so it has been, and so it ever will be. When once the contemplation of a giant crime usurps the mind, the fear of punishment can find no entrance, and its infliction only hardens those who behold it.

We have, at last, discovered that which our ancestors should have discovered long ago—we have, though somewhat tardily, found out, that these savage exhibitions are but revolting failures—that a cannibal appetite for blood has been created—that wherever legalized, they characterize, if they do not cause, the national decline: witness decrepid Spain, exulting over her bleeding Matador; or Rome, in her degeneracy, counting the agonies of the dying gladiator. The Lords' committee disapprove the system, and they propose in lieu of it—the abolition of death punishment, of which their report assuredly is the knell?—No, but a plan for *private* executions, attested by officials! England never will accept the substitute.

If we have read aright her social character, she would recoil instinctively from private blood-shedding, no matter what the modifications. Publicity in all which appertains to the courts of justice, has become a necessity with our people. The plain truth is, the death-system has broken down entirely, and expedients will not mend it. Though we exclude the people, we dare not exclude the press, and every incident which now thrills the land with pity or with horror, will be made just as public as if enacted on a platform. The moral evils of drunkenness and debauchery, inseparable from the scene, can doubtless be averted; but a direr evil will supersede them, if suspicion should be excited as to the enforcement of the law.

The popular mind is by nature jealous of authority; anything like mystery in a matter so solemn, and so universal in its application, will at once arouse and aggravate the feeling. Darkly, indeed, will that day dawn on England, which introduces even a doubt on such a subject. The endurance, nay, the cheerful endurance of taxation unequalled in its amount, arises entirely from the confidence in everything appertaining to our courts. The peasant and the artizan walk erect under the pressure which secures to them the protection of the laws, and gives them assurance of their equal operation. Publicity, wide publicity, in every stage of our criminal proceedings, from the initiative in the police-court, to their termination by the executive, commands, and most justly, universal acquiescence. There is one exception, that of the grand jury, and to our own knowledge, its secrecy has worked much ill, and may produce much more. Of the moral effect of executions on the young inmates of the prison, who, of course are secluded from the contamination of the spectacle, we have authentic and most unquestionable authority.* "Let the schoolmaster of Newgate be examined, and he will prove that for some days after every execution, a common amusement of the boys, is, to play the scene over again, one boy acting the constable, another the ordinary, a third the sheriff, and a fourth the hangman. I have seen this done many times, and on one occasion before the bodies of the men just hanged had been removed from the scaffold." This has been witnessed by Mr. Wakefield, within the prison. But what has not all London seen outside of it? Have we not had the foulest murders dramatized and enacted? Have we not seen, night after night, the metropolitan theatres crowded to suffocation, and christian audiences cheering the mockeries of suffering crime! Who can forget the Thurtell tragedy, with its carefully authenticated accessories—the very car from which the victim fell, paraded on the stage! Even within these two

* Wakefield on the Punishment of Death.

months we find in the journals, the fac-simile of a play-bill as issued at Oldbury:—

"AN UNEQUALLED COMBINATION OF ATTRACTION AND NOVELTY!

THE RUGELY TRAGEDY,

OR THE

LIFE AND DEATH OF WILLIAM PALMER!!

First scene—RUGELY. *Second scene*—SHREWSBURY. *Third scene*—LONDON.

TO CONCLUDE WITH

MUSIC AND DANCING, AND A LAUGHABLE FARCE!"

And all this, after human blood has flowed in torrents, and divines and statesmen have preached and apostrophized the efficacy of example; but the Lords' Committee can amend all this—the remedy proposed is to repeat in private that which in public proved a worse than failure. In Prussia, it seems, and in some states of America, they say, this system is introduced, and has succeeded. We have no doubt of it, no more than we have that cannibalism is popular in Caribbee. But what is that to us? every country has its customs, suited to its tastes—so let them; we wish to Prussia all prosperity, present and to come, but we covet not her institutions; they are doubtless palatable to her people and racy of her soil: to us, they would be exotic; the plant that blossoms in the hotbed of a despotism, would not live an hour in the bright, breezy, open, mountain air of liberty. As to America—why should we borrow from America the expedient, when she proffers to us the right? The witness from that country, the Honourable Mr. Kennedy, expressly stated, that "the *total abolition of capital punishment* is a subject which is in constant discussion among them," and that "one or more of the States may have abolished it altogether."

According to the statement of Mr. Andrew, an American barrister, when addressing a local legislative committee, Alabama, Michigan, Maine and Rhode Island, had tried the experiment, and one of them having had nine, and another twenty-five

years' experience of it, were satisfied with the result. In the State of Louisiana, known throughout the world by the noble report of Mr. Livingstone, on "the code of crimes and punishments," it has no existence:—On the other hand, in that of Massachusetts, where the severity is excessive, for sixty-five years the crime of murder has been gradually increasing.* In Switzerland, in the cantons of Friburg and Neufchâtel this punishment has been abolished, without increase of crime; while in that of Berne there are frequent executions, and frequent and aggravated offences.

Executions, then it is clear, have not deterred by their example; but have they not done worse? Have they not suggested crime? Paradoxical as this appears, it is a fact nevertheless. Some instances were adduced before the Lords' committee. "It having occurred to me," writes the chaplain of Aylesbury gaol, to the Venerable Mr. Bickersteth, "during my intercourse with criminals, that a disproportionate number of them seemed to have resorted to witness executions; I have today made it my business to question all the prisoners here under sentence of six months and upwards upon that point, and the result has remarkably confirmed my impression: for I find that the great majority of those who have had the opportunity, *have attended executions.* So also, only a few months previously to his own execution, had the unhappy man whom I attended to the scaffold; and it became a subject of deep regret and bitter remorse to him that he had gone to it as to a holiday fair, and had returned from it without perceiving any warning."

So, also, Mr. De Katte, attaché to the Prussian legation, giving his reasons for the adoption of private executions, says, "we found the publicity of executions had a bad moral effect: it rather excited people to commit murder than deterred them from it."†

Mr. Rowton states a remarkable instance of this: "a young

* Speech of Mr. Ewart, Parliamentary Debates, 1856. † Lords' Report, 1856.

man of mild and gentle disposition, murdered a little girl, with no provocation in the world—in fact, he never saw her before: the excuse he pleaded was, that years ago he saw a man destroyed; that ever since that time, he had experienced a fiendish desire to murder somebody, and that he could not rest until he had committed the deed."*

"I am aware myself (says Dr. Lushington, in his evidence,) of one remarkable case, of which I know the particulars most accurately. There was a person executed at Newgate for forgery; a boy respectably brought up, passed by, who for the first time, saw an execution; he went home, and that very day forged upon his master, and was left for execution. He was not executed, because the Ordinary of that time, refused to administer the sacrament to him, upon the ground of his youth, and that was considered a sufficient ground to let him off; though at that period the executions for forgery were uniform.†"

Mr. Dymond, in his instructive speech at Newcastle-upon-Tyne,‡ before referred to, cites several cases to the same effect. "A boy, named Wicks, was executed some years ago, in London; he had seen executions, and was desirous of signalizing himself on the scaffold, and absolutely purchased a pistol and shot his master, that he might be hanged for it. A man, named Connor, was also executed in London; he had seen an execution in the morning of a certain day, and the same night was in the hands of the police for the murder of a wretched woman with whom he lodged. A man, named Mobbs, was hanged some time ago, in London, also for the murder of his wife:—the very next day a man was taken into custody for attempting to murder his wife, saying to her, 'I will do for you, and be hanged for it, as Mobbs was yesterday morning.'"

* The Punishment of Death Reviewed, p. 74.

† Second Report of the Commissioners on Criminal Law, 1836, p. 52.

‡ April 10th, 1856.

The Rev. Mr. Roberts, of Bristol, has rendered it superfluous to continue this enumeration. He states, that out of one hundred and sixty-seven persons, whom he had attended, under sentence of death, one hundred and sixty-four had been present at public executions! Here is a speaking commentary on our legislation. "The end of punishment (says the Marquess Beccaria,) is no other than to prevent the criminal from doing further injury to society, and to prevent others from the like offence." We apprehend that every jurist, and publicist, and casuist living, will admit this to be a sound aphorism in penal legislation.

"The only way to look at the punishment of death, (says the noble chairman of the sessions for the West Riding of Yorkshire,) is to say, is it an example or not? If an example, it is defensible; if it is not, it is not defensible."* If this be so indeed, how dire, how terrible is England's retrospect! For ages past, we have doggedly pursued a system, which has positively generated crime—its parent rather than its preventive. There never was 'a tree' planted in England, with such a power of re-production as the gallows:—deny the fact—here are the proofs of it; dispute the inference, here is history teaching by example;—it cannot be either disputed or denied, but, whoever asserts it, may be denounced. So let it be. The christian abolitionist should regard such anathema, as he would the howl of the hyena scared by bright day-light from his unholy banquet. Thus was Romilly denounced, and "ridiculed, and execrated" too, for daring to meddle with the murderous enactment which sacrificed poor Mary Jones upon the scaffold. But, so it has been from immemorial time—so has it been with all the benefactors of an ungrateful world from Socrates upward, even unto him, the pure, the meek, the Blessed One, who died for its redemption.

This cruel system, so inconsistent with every precept he has

* Evidence of Lord Wharncliffe—Commissioners' Report, 1836, p. 96.

given to us, is an admitted failure, worse than a failure, admitted by a committee of the House of Lords. But the punishment, it seems, is a fitting one—its failure was caused by the mode of its infliction. We have been tardy in discovering it. A much shorter time will suffice to test the adequacy of a substitute, utterly at variance with the genius, the feelings, the principles, or it may be, the prejudices of the nation. If we cannot repeal this punishment at once, if expedients must be resorted to, WHY NOT TRY ITS SUSPENSION FOR A TIME? The raven prophecies, which croaked their ill omen, on all past repeals, have all been falsified; why should this prove an exception? It did not prove so in despotic Russia, under the rule of Elizabeth or Catherine—nor in Tuscany, under the sway of Leopold—nor does it, at this moment, in Republican Louisiana. These are not arguments, or theories, or speculations, but facts —recorded facts—and,

> "Facts are cheels that winna ding,
> And mauna be disputed."

In good truth, we have misconceived the force of capital punishment, all along; and we mistake now in attributing its failure to the mode of its infliction. The germ of the failure is in the penalty itself; if murder deserves the severest punishment, and we admit it does, death is by no means the severest; it has seldom the terrors we attribute to it. The hardened criminal deludes himself into heroism, by its endurance. "The lads of the village* shall have no cause to blush for me," said Thurtell, on the eve of his execution. Others regard it as the solution of a mystery—"here goes," said one of the traitors of Cato Street, "to learn the great secret," as he swung himself into eternity. A very few years ago in Ireland, three wretched men were hanged for murder; they sneered at death, and ate and smoked just before their execution; one of them declared

* London.

he would not accept of a reprieve, and that the hangman would do the best deed he had ever done for them; while another declined to speak upon the scaffold, because, said he, "our Saviour said nothing when he was executed!"* "Take me away from *this concourse*," said the sensitive Greenacre to his hangman. The murderer often hazards death, and sometimes meets it, in the perpetration of his crime. The rabid fanatic of Shropshire, as we have seen, sang and shouted himself into "glory" on the scaffold, and died, asking orders for another world!

So true it is, as the great Bacon tells us, that "death is no such terrible enemy, when man has so many attendants about him, that can win the combat of him. Revenge triumphs over it, love slights it, honour aspireth to it, grief flieth to it, fear preoccupieth it." Death on the scaffold is but a moment's agony, a shudder, a fall, a quivering, it is over. "If that is all," said the peasant at Bury, after seeing a murderess executed, "I should not care about being hung myself."† Can any person doubt that a life-long punishment—the longer the life, the heavier the punishment—the life protraction being, in fact, of the essence of the punishment—hopeless captivity, girt round with degradation, ceaseless toil, public exposure, the murderer's ignominy, never terminable but by that welcome death, which would be invoked, not dreaded:—Can any one doubt that an example such as this, would be far more monitory than an exhibition at once valueless and revolting.

"There are many," says Beccaria, "who can look upon death with intrepidity and firmness; some through fanaticism, and others through vanity, which attends us even to the grave; others from a desperate resolution either to get rid of their misery, or cease to live. But fanaticism and vanity forsake the criminal in slavery, in chains and fetters; and an iron cage and

* Speech of Mr. Ewart, 1856.

† Lords' Report—Archdeacon Bickersteth's evidence.

despair seems rather the beginning than the end of their misery. The mind, by collecting itself and uniting all its force, can, for a moment, repel assailing grief; but its most vigorous efforts are unable to resist perpetual wretchedness."* The infliction then is a failure; and the uncertainty of the infliction aggravates the failure, and increases crime. All criminals calculate, even after conviction, on the chances of commutation, and each hopes the chance may fall on him. Though the law be sanguinary, the Home Office is not, and we firmly believe that one of its most onerous and anxious duties is the recommendation of as many convicts, as it can conscientiously, to the mercy of the crown. Who can doubt it? Let justice be done to all. What earthly interest can any statesman, holding the distinguished station of Home Secretary, have in tendering advice to his Sovereign other than such as will redound to her honour and his own. The two gentlemen† on whom the responsibility of the Home Department rests at present, possess every qualification requisite to acquire the public confidence; humane, laborious, honourable men, selected for their fitness, from the bar to the very highest rank at which they might have aspired. This we say as a matter of mere justice, because there seems a growing disposition to inflict on individuals the vices of a system. To judge fairly the selections of the Home Office, we must know the facts in each particular case, and such disclosure might be most impolitic. We have every guarantee of which the system is susceptible, but the system itself is vicious in the extreme. An uncertainty as to the infliction of punishment, will to a certainty encourage the crime which incurs it; what can be more illusive than the scene we so often see enacted; a heinous crime —an impartial trial—a clear conviction—proclamation made—sentence passed—a solemn warning to prepare for death—all hope of mercy utterly prohibited—the scene is over—and, lo!—

* Beccaria, v. xxviii. p. 108. † Sir George Grey and Mr. Waddington.

the punishment is commuted! Everybody knows that this is common, culprits calculate on it, they deem the whole matter to be a game of chance, and each hopes that he may prove the winner. Hence crime increases. Doctor Lushington testifies strongly to the injurious operation of this uncertainty,—"My own notion is, that there are very few criminals deterred from the commission of crime by any fear of the punishment of death; the chances are so much in their favour, taking the whole from the commencement of a prosecution to the period of execution, that I verily believe, and I am quite satisfied I could shew by a variety of instances, that that is the general feeling."

"Then you think that the rarity of capital punishment diminishes the efficacy of the capital laws?"

"Not the rarity of capital punishment, but the uncertainty of its being inflicted in any particular instance. I have been into the gaol of Newgate before the order came down for executions to take place, when there were thirty-five persons capitally convicted; such has been the uncertainty that the then governor of the gaol has pointed out to me as the persons likely to be executed, four or five individuals, and that same night came down the order, and not one of them was ordered for execution, but four other persons."* To shew this uncertainty by the records of the Central Criminal Court, very kindly accorded to us thence,† we transcribe a list from 1840 to 1856, of capital convictions with their several results, confining ourselves to those involving violence.

Name.	*When Tried.*	*Offence.*	*Result.*
James Dodds	1840, March	Burglary with violence	Transported for life
Samuel Bailey	May	Wounding, intent to murder	Ditto
Constantine Sullivan	July	Rape	Ditto

* Second Report of Commissioners on Criminal Law, 1836, p. 50.

† We are indebted for this list to Mr. Clark, the Clerk of the Arraigns, and to the kindness of Mr. Jonas.

Name.	*When Tried.*	*Offence.*	*Result.*
John Chrisham	1841, Jan.	Rape	Transported for ten
Harriet Langley	April	Child-murder	Ditto [years
John Errington	August	Rape	Ditto for life
Robert Blakesley	Oct.	Murder	Executed
T. J. Ward	Nov.	Ditto	Ditto
Daniel Good	1842, May	Ditto	Ditto
Thomas Cooper	June	Ditto	Ditto
John Francis	June	High Treason (shooting at Her Majesty the Queen)	Transported for life
Sarah Stroud	August	Murder	Pardoned
Giovarni Ottolinni	1843, May	Stabbing & Wounding	Transported for ten years
G. Azzopardi	May	Murder on ship-board	Ditto for life
T. Trenate T. Huggett W. Jones	August	Burglary with violence	Ditto
William Stolzer	Oct.	Murder	Ditto
Edward Dwyer	Nov.	Ditto	Ditto
Michael Hayfield	Nov.	Cutting with intent	One year's imprist.
Jeremiah Caylor	Nov.	Burglary with violence	Transported for life
Mary Furley	1844, April	Murder	Ditto for 7 years
William Crouch	May	Ditto	Executed
Augustus Dalmas	June	Ditto	Transported for life
Sarah Bennett	June	Robbery with violence	Ditto
James Tapping	1845, March	Murder	Executed
T. H. Hocker	April	Ditto	Ditto
Joseph Connor	May	Ditto	Ditto
Martha Browning	Dec.	Ditto	Ditto
Samuel Quennett	Dec.	Ditto	Ditto
T. W. Wicks	1846, Feb.	Ditto	Ditto
H. Harley	July	Cutting with intent	Transported for life
John Smith	August	Murder	Ditto
Mary Ann Hunt	1847, August	Ditto	Imprisoned and Transported
A. T. Munro	August	Ditto (a duel)	One year's imprist.
John Hutchings	Sept.	Ditto	Executed
David Adams	Nov.	Cutting with intent	Transported for life
Thomas Sale	Dec.	Murder	Executed
George McCoy	Dec.	Ditto	Transported for life
W. N. Allnut	Dec.	Ditto	Ditto

Name.	*When Tried.*	*Offence.*	*Result.*
Harriet Parker	1848, Jan.	Murder	Executed
Annette Myers	Feb.	Ditto	Transported for life
G. Mason	Feb.	Burglary with violence	Ditto for ten years
H. Parker	April	Cutting with intent	Ditto for life
William Tomkins	May	Murder	Ditto for life
G. J. Hewson	July	Ditto	Executed
Hannah Leath	August	Administering poison	Transported for 7 years
W. Cullen, G. Digby, H. Pyke	1849, Feb.	Burglary with violence	Ditto for 20 years
D. Holinden	June	Cutting with intent	Ditto for life
F. Manning and Wife	Oct.	Murder	Executed
Stephen Jordan	Oct.	Cutting with intent	Transported for life
C. Cosby	Nov.	Ditto	Ditto for 15 years
Johanna Brown	Dec.	Robbery with violence	Ditto for 10 years
Margaret Forbes			Ditto for 7 years
Ann Merrett	1850, March	Murder	Ditto for life
William Smith	Nov.	Ditto	Ditto
William Harris, H. Round	Nov.	Shooting at to murder	Ditto
J. Cannon	Oct.	Attempt to murder	Ditto
H. Horler	Dec.*	Murder	Executed
C. Saunders	1853, Feb.	Ditto	Ditto
G. Corton	Feb.	Wounding to murder	Transported for life
T. Rolls	May	Ditto	Ditto for 20 years
J. Upsom	August	Ditto	Ditto for 10 years
N. Mobbs	Oct.	Murder	Executed
C. P. Grinney	Nov.	Wounding with intent	Transported for life
C. Mallet	Dec.	Robbery and wounding	Ditto for 15 years
E. Barthelemy	1855, Jan.	Murder	Executed
T. Clearey	Feb.	Shooting to murder	Transported for life
L. Buranelli	April	Murder	Executed
T. Henderson	April	Wounding to murder	Transported for life
D. Lorden	Nov.	Murder	Ditto [life
T. W. J. Corrigan	1856, Feb.	Ditto	Penal servitude for
C. B. Weston	Feb.	Ditto	Ditto
W. Bousfield	March	Ditto	Executed
E. A. Harris	April	Ditto	Transported for life
C. Somner	May	Ditto	Ditto
W. Palmer	May	Ditto	Executed

* An omission of the returns for the years 1851-2 and 1854 has been discovered, but unfortunately too late for insertion here.

Thus, it appears, from the above authentic list, that in *all* the cases not amounting to murder, the sentences were commuted. In those of actual murder, forty-four in number, twenty-three were executed, nineteen transported, one was pardoned, and one imprisoned for a year in Newgate. This vacillating commutation-nostrum is a fountain of mischief in our criminal administration. It is calculated to derange the system altogether. It stultifies the court—it falsifies the sentence—it neutralizes the law—it nerves the criminal. A punishment solemnly denounced from the judgment seat should be rigidly, literally and inflexibly inflicted. We should have no paltering with crime or criminal —no ermined menace, ending in a mockery. We advocate not undue severity. Let our punishment be as lenient as the parliament may devise for the offence. But, be it what it may, *let it be carried out*, and let this stern fact be well certified in all the dens and caverns and hatching nests of crime. The sanguine desperado who calculates on consequences as mere contingencies of main and chance, in nine cases out of ten will shrink before *certainty*. Of course, the exception to our rule would be, where innocence is subsequently ascertained—and then remission as to the future and compensation for the past,—a just, humane and christian article, although of impossible place in the creed of our opponents. While the executive commutes a penalty, the legislative annuls or varies it, and as it seems to us of equal ill effect. Thus some fews years ago, transportation was all but abolished,* and in place of it, a term of imprisonment was substituted. The ticket-of-leave experiment followed upon that, and burglaries are now perpetrated in Fleet Street. The gaols were thinned on the appeal of pious and pains-taking chaplains, self-glorying in the conversion of their protogés! Simple-minded enthusiasts! They misapprehended the conviction by which the conversion was produced. No doubt as a corollary to all this,

* The writer, examined before a committee of the House of Lords in 1847, vainly, with other *practical* men, forewarned their Lordships of the impolicy of this repeal.

crime and committals will inevitably increase. Let us have however no demand made upon us for the re-enactment of a sanguinary code in consequence of its substitute being thus shorn of its efficiency.

Such being the uncertainty in carrying out the law, a momentous question instantly suggests itself — Is there more of certainty in its administration? Undoubtedly not; if the walls of Westminster Hall could speak, they would at once say—no. Who has not heard of the "glorious uncertainty?"—happy indeed is the man who has not felt it. Let us see how it works in our courts of equity and common law, before we investigate its criminal operation. We are not left to speculation here; our library shelves groan under the lumber of what once was wisdom, and bend beneath the burden of obsolete authorities and over-ruled decisions. Mutability is the atmosphere of the lawyer's world, it is the breath of his nostrils; if he has it not he dies. Let whoever doubts it, stroll for a moment into the courts of Westminster,—there he will see the sages of the law laboriously undoing what has been elaborately done, granting new trials where errors have been committed, and setting aside verdicts sometimes obtained against the weight of evidence, and, as it sometimes happens, from judicial mis-direction; one half of the term is of necessity thus occupied. Let him then migrate from common law into the maze of equity, and there he may meditate on Vice-Chancellors and Lords Justices and a Master of the Rolls, reviewing decisions brought before them on appeal, and with anxious care affirming or reversing them. The scene is concluded in the House of Lords, where sits the Lord Chancellor with his legal staff, patient and pains-taking, reviewing the reviews, and perhaps reversing some of the reversals. Such is the uncertainty of inevitable occurrence in the ministration of the law, and this with a bench, so filled and constituted, as to be above praise or depreciation; and this has ever been, and is, and ever will be, until we have, what we

never can have—an infallible tribunal. Suppose these ulterior corrective investigations were not open to a suitor where property is concerned, see what an amount of mischief might ensue —how many heirs might be despoiled of their inheritance—how many usurpers might enjoy estates to which they had not either claim or title, while the rightful owners were perhaps pining in a workhouse—how many wrong-doers might escape triumphant, how many injured plaintiffs might be deprived of their redress! Scores of such cases every year in England demonstrate at once the uncertainty of our law, and the fallibility of its wisest and its best administrators. Seeing therefore what undeniably exists in our courts of common law, shall we find greater certainty in those of criminal jurisdiction? Less, infinitely less: men carry with them there the same liability to err, the same imperfections, and the same infirmities which warped their judgment in the civil court; and they will find, in the criminal one, everything likely to aggravate these defects. They will find there, but too often, the passions of mankind in fearful operation:—avarice raving over its losses—revenge furious for its victim—details of suffering, sometimes real, often simulated, all calculated to enlist the feelings, to inflame the imagination and mislead the reason; well concocted perjury, exaggerated injuries, possible mistake, delusive identity—who can always guard against them? They have deceived the wisest and baffled the most cautious. Let us add to these the endless varieties of the human temperament, always operating unconsciously on the possessors; now tending to injurious lenity, now still more injuriously, to harshness; in each case working unintentional injustice. Such we know to be the nature of mankind, too often the mere puppets of impulse, latent, but invincible.

"Naturam expellas furca tamen usque recurret."

What deduction do we draw from this? The obvious and the righteous one, that erring man should not inflict a punishment

fatal and irreparable. The infliction of such penalty is the awful prerogative of the only Being who never can do wrong. In the hands of man it is a perilous assumption, unwarranted by reason or religion—an assumption fraught with fearful responsibility, because its errors are both possible, and proveable, and never can be expiated. This it was which wrung from Lafayette the solemn exclamation in the French Chamber of Deputies*—"I shall ask for the abolition of the punishment of death, until I have the infallibility of human judgment demonstrated to me. The punishment of death has always inspired me with feelings of horror since the execrable use made of it during the former revolution." Such reminiscence, terrible indeed, naturally produced this rational determination. The principle is a sound one. Fallible man should never inflict an irreparable punishment. If the judgment is wrong, justice itself is compromised; public confidence in its ministration is undermined. "One foul sentence (says a consummate authority)† doth more mischief than many foul examples; for these do but corrupt the stream, the other corrupteth the fountain." In all minor punishments, if in error, we can make some compensation—inadequate perhaps, but all within our power. There are sufferings, of course, which we never can compensate. We cannot atone to innocence for the pang bitterly endured by it in exile or in prison, when torn from life's endearments without a crime. We cannot make reparation to friend, or child, or parent for the mental agony they have causelessly endured;—still we can do something. We can recall the exiled convict to his country—we can restore the pining captive to his home—we may proclaim the reinstated character of both—and we ought to make them pecuniary reparation. Such should be the law. If one subject imprisons another falsely, he is liable in damages. Why should the State be less amenable for the same wrong inflicted upon those who are deemed its children and

* 1830. † Bacon.

under its protection? This we may do in penalties short of death. We have erred and injured; we can retrieve the error and repair the injury. Should we err, however, (and to err is human,) in the death infliction, the error is fatal, irremediable, irreparable. Alas, who shall call back again the departed spirit? Who can reanimate the lifeless clay? Yet man—proud man—presumptuous as proud, and frail as presumptuous,—dares to usurp the power of the Infallible, and arrogates to himself dominion over life! Audacious pretender—is that power legitimate? Evince it now—give back her guiltless husband to the widow, restore the victim parent to his orphans! You have despoiled the hearth, you have destroyed their happiness, you have robbed them of their guardian—their innocent, but martyred guardian—and you have flung them homeless, penniless, and unprotected on the world. And this you have done by a self-asserted authority, which you will not renounce, and cannot justly exercise.

It scarcely required the eloquent pen of the wise author of the Louisiana code to pourtray the agony of a guiltless man under an unjust conviction. "The consciousness of innocence," says he, "that which is our support under other miseries, is here converted into a source of bitter anguish, when it is found to be no protection from ignominious death. The wretched convict leaves unmerited infamy to his children; a name stamped with dishonour to their surviving parent; and bows down the grey hairs of his own head with sorrow to the grave. As he walks from his dungeon, he sees the thousands who have come to gaze on his last agony: he mounts the fatal tree, and a life of innocence is closed by a death of dishonour! This is no picture of the imagination. These legal murders have been committed. These horrors not only have happened, but they must be repeated: the same causes will produce the same effects. The innocent have suffered the death of the guilty, and the innocent will suffer."

And this is the system which men will uphold, with, not the possibility, but the sad experience of such consequences flowing from it! Men of the law—men of the gospel—have done this! We have seen the time when both deluded themselves into the conviction that life might be forfeited for a private theft of five shillings in a shop! These days are gone; but in our own memory, and in our own hearing, a struggle was made, and made by such men, to retain death punishments for such offences. But there is nothing too monstrous for the insanity of what man calls reason. "Oh, Liberty," said Madame Roland on the scaffold, "what crimes are committed in thy name!" And well she might exclaim so, when it pleased a sovereign philosophy to turn rank and worth and science, and even christianity, into capital offences. All in the name of Liberty!! Nor let England plume herself; she has more cause to blush. If she has not imitated the tiger ferocity of revolutionary France, she has done worse. Amid the calm solemnity of her courts of justice she has convicted persons of crimes which were impossible, and executed them accordingly—for instance, witchcraft. This in the name of law! Professing the angelic doctrines of the gospel, she has dragged its sacred prelates to the stake, and burnt them alive, and scattered their ashes to the winds! and this in the name of christianity! This is penned in no sectarian spirit; for Geneva rivalled the atrocities of Smithfield. It is but meant to shew how frantic, how blasphemous, is the usurpation of a power which enables man to perpetrate such crimes in the name of—law and—liberty and—religion, and—in defiance of them all. And yet, in the face of facts such as these, the retention of this authority is demanded! To be sure the fortress has surrendered; but all is not gone—the citadel remains. By the law of the anti-abolitionists murder is still a capital offence. Let us see what that very law has done, and then the reader may designate it as it deserves. Let us see whether Mr. Livingstone was justified in asserting

that innocent persons had been executed. The details are horrible, but they imperatively demand the solemn consideration of every man in England. We commence at a very distant period, because we would shew how early has been our warning, and how protracted our disregard of it; but the list shall extend even to the day in which we live.

To begin:—On the 6th day of August, 1660, William Harrison, who was steward to Lady Campden, a person of good estate in Gloucestershire, left his home in order to collect her rents. There happened to reside in the neighbourhood, an humble family of the name of Perry, a mother and two sons,—Joan, John, and Richard,—of whom Joan, the mother, was a reputed witch, and John, one of the sons, was known to be half-witted. It so happened that days and weeks elapsed and yet Harrison returned not, nor were any tidings heard of him. Of course the population of the place became excited, and rumours were rife that he had been robbed and murdered. From the mission on which he was known to have left his home, and his prolonged absence, the suspicion was not unnatural. The alarm which ensued and the numberless inventions which were circulated, are supposed to have bewildered what little intellect the poor idiot had; for he actually went before a justice and solemnly deposed to the murder of Harrison, by his brother Richard, while his mother and himself looked on, and afterwards joined in robbing the deceased of £140. On this the whole three were sent to prison, and at the ensuing assizes were doubly indicted for the robbery and murder. The presiding Judge, Sir C. Turner, refused to try them on the murder indictment, as the body had not been found; they were, however, arraigned on the charge of robbery, and pleaded guilty on some vague supposition that their lives would be spared. While in confinement John persisted in the charge, adding that his mother and brother had attempted to poison him, in the gaol, for peaching. When the next assizes came, Sir Robert Hyde, considering the length

of time which had elapsed, and the non-appearance of Harrison, tried them for the murder. The depositions of John, and the plea on the indictment for robbery, were given in evidence, and the whole three were forthwith convicted. On the trial John retracted his accusation, declaring that he was mad when he made it, and knew not what he said. They all suffered death; the mother was executed first, it being alleged that having bewitched her sons, they never would confess while she was living; they both died, however, loudly protesting their innocence. But the disappearance of Harrison, the declarations of John, and the plea of 'guilty' to the indictment for the robbery, seemed to invest the case with every human certainty. Human certainty! we might as well talk of an incarnate phantom:—the only certainty in the whole transaction being, that three innocent persons—quite as guiltless as the Judge who tried them, or the Jury which convicted them—were slaughtered by what they called the sword of justice. This poor, ignorant, deluded family, had for three full years lain in a murderer's grave, when —lo, the murdered Harrison *re-appeared in Gloucester!* He accounted for his absence thus, in a letter to Sir Thomas Overbury. On returning after the receipt of Lady Campden's rents, he was set upon by a gang, who forced him to the sea-shore, where they hurried him on ship-board, and carried him off to Turkey; they there sold him as a slave to a physician, with whom he lived for nearly two years, when, his master dying, he made his escape in a Hamburg vessel to Lisbon, and was thence conveyed to England.* Gloucester was thrown into the most painful agitation;—no great wonder,—their city had been desecrated. What must have been the feelings of the Jury which convicted, of the Judge who sentenced, of the authorities who executed that hapless family! Yet the blame was not theirs: poor, fallible, benighted creatures, they were not responsible; they were but the blundering administrators of an arrogant and

* Legal Recreations, page 572.

erring legislation. "He," as Sir William Meredith truly told the Parliament of 1777, "he who frames the bloody law, is answerable for the blood which is shed under it." From the grave of the Perrys, a monitory voice should have arisen, repealing for ever capital punishments in England. We have heard it said in relation to this case, "Oh, the times were unenlightened, and the jury made a mistake; the wisest men may sometimes make a mistake." Unenlightened times! There were men in those days, out of each of whom, whether in poetry, philosophy, or statesmanship, half a dozen modern great men might have been carved. Legislation indeed was barbarous, and continued so. Fifty-six years after the slaughter of the Perrys, Judge Powel at Huntingdon, left Mary Hickes, and her little daughter Elizabeth, *eleven years old*, to die for witchcraft, and die for it they did.* As to the mistake—on that we found our argument: it is precisely because we may make a mistake that we should revolt at risking one which is irreparable. We have made mistakes enough, and for a time we even fostered them by the promise of reward upon conviction; miscreants tempted by the "pieces of silver," counted their blood-money upon the coffins of their victims. The foulest accusations, supported by perjury as foul, often proved fatally successful, bewildering the juries into the most terrible injustice. For instance:—

A poor man, named Kidden, a porter in the city, was tried, convicted, and executed at the Old Bailey, on a charge of highway robbery; the man was hard-working and honest, and of untainted character, but all could not save him from an untimely death; his life was perjured away by three atrocious wretches, named Macdaniel, Berry, and Jones, who shared £40 amongst them for the murder of poor Kidden; he was hanged, however,—and it must have solaced him,—according to the most approved forms of the law. When this sad tragedy had been enacted, it appeared that the victim was entirely innocent. Then

* July 17, 1716.

came the glorious opportunity—the grand legal expiatory triumph! As Kidden had been slaughtered by mistake, they determined on giving him perfect satisfaction, by hanging, in return, the three who hanged him—a kind of criminal set-off. The conspirators however were tried, convicted, and sentenced for the murder, but executed they were not; a flaw in the indictment let them loose upon society. The murder indictment of those days, which has been consigned by Lord Campbell to the museums of the curious, was a miracle of suicidal ingenuity —never before, nor since, did the spiders of special pleading weave a more complicated or defective cobweb. The liberated felons continued to pursue their dreadful traffic, with what success we know not; they were, however, once more detected, and convicted of a similar conspiracy against human life; exposure on the pillory, and seven years' imprisonment seem to have terminated their career. Kidden was executed in 1755.* Notwithstanding this frightful admonition, the reward temptation was still in full play so recently as 1819, about which time it was abolished through the exertion of Sir Matthew Wood, a magistrate than whom the city of London has seldom seen a better. Four poor Irishmen were rescued from certain death by this excellent man who proved clearly that they were the innocent victims of a cruel conspiracy, at the head of which was one Vaughan, an officer of the city. The case was called "the blood-money case," and is still remembered for its remorseless atrocity.

Instances have occurred too, where guiltless men have been sacrificed to what is called circumstantial evidence! How often have we heard great eulogy on 'the perfection of such proof'—'far better than direct testimony,' which, forsooth, may be false, but circumstances constitute a finished train of damnatory facts, where each fact links itself to another so fittingly, that deception

* Morning Herald, May 3, 1832.

is impossible;—such is the sophistry—the sagacious sophistry of self-conceit. Behold one of *the chains*:—

A man named William Shaw, an artizan of Leith, lived in that town respectably for his station, his family consisting but of an only daughter who resided along with him: she had formed an unfortunate attachment to a young man whom the father found to be of licentious character, and so his addresses were sternly discountenanced. This caused continual dissension, until at last, one day it arose to such a height that the tenant of an adjoining room could not avoid overhearing the conversation; the voices of father and daughter were recognised, and the words, "cruelty," "barbarity," and "death," were over and over again angrily enunciated. The father at last left the chamber abruptly, locking the door behind him, and leaving his daughter a prisoner. After some little time deep moans were heard from within, which gradually becoming fainter, the alarmed neighbour procured the assistance of a bailiff and burst open the door. Ghastly, indeed, was the spectacle which presented itself. There lay the young woman on the floor, weltering in her blood, a knife, the instrument of her death, beside her. To the question whether her father was the cause of it, she made a faint affirmative gesture, and expired. At this moment the father reappeared. His horror may be imagined: every eye was fixed on him, and some specks of blood upon his shirt-sleeve seemed to confirm strongly the dreadful accusation which his daughter's gesture had too clearly intimated. Vainly attempting to account for the stained sleeve by the rupture of some swathe with which he had bound his wrist, he was hurried off to prison, tried, condemned, and executed: "not a man in Leith," says the report, "having a doubt as to his guilt." And yet that man was innocent! he was a murdered man: his last dying words—"I am innocent of the murder of my daughter," were true to the very letter. After Shaw had swung for weeks upon his gibbet—for he was gibbetted in chains, exposed to the four winds of heaven, to the gaze of

universal horror—an object of disgust and dread and indignation to every passer-by, as they hurried away from the assassin of his child; after this butchery of the living, and this insatiable posthumous vengeance on the dead, it was most clearly shewn that he was not merely guiltless, but that he fell a sacrifice to his regard for her he was accused of having murdered! The incoming tenant who succeeded Shaw, discovered in some cranny of the room a paper, written by this wayward girl, announcing her intention of committing suicide, and ending with the words, "My inhuman father is the cause of my death," thus explaining her expiring gesture. The hand-writing of the document was indisputably proved. And all this because an anxious parent sought to avert the misery of his child! What a satire is here upon human self-sufficiency!—"Not a man in Leith had a doubt as to his guilt;" and now—not a man in Leith had a doubt as to his innocence! Alas for mankind! tossed about by every breath of circumstance, and yet daring to act as if infallible. The local authorities did all they could; they unchained and ungibbetted their guiltless felon, they laid him in his quiet grave at last, waving a pair of colours over it in token of his innocence.* Much it signified to the poor clay beneath! Now here was a case in which justice, no doubt, was impartially administered—and where indeed the result appeared inevitable—it appears also to point as inevitable a moral. What are the revelations of innocence such as this, after the perpetration of injustice such as this, but so many solemn admonitions from above, not to tamper with the prerogative enthroned there!

The case of Bradford, an innkeeper in Oxfordshire, rose almost to actual demonstration. A gentleman, named Hayes, on his way to Oxford, put up at his house. Joining two other travellers at supper, he foolishly disclosed that he carried about with him a very considerable sum of money, and soon after they retired to their chambers, Hayes having a room to himself, and

* Wilson's Celebrated Trials.

the others one with two beds. In this room a night-light was left burning. About midnight, one of the gentlemen, being awake, thought he heard a deep groan, and on its repetition he softly awoke his friend: the moans increasing, they silently proceeded to the apartment adjoining, whence the noise seemed to issue. On entering, dire indeed was the spectacle they beheld; a man lay on the bed weltering in his blood, while another stood over him, a knife in one hand and a dark lantern in the other. The murdered man was the stranger who had supped with them, and he who stood over him was their host. Bradford appeared petrified, but, taxed with his guilt, he denied it altogether. His explanation was, that, being awakened by a noise, followed by deep groans, he struck a light, seized the knife for self-defence, and only just entered the room before them. Unhappily for him, his knife and hands being bloody left no doubt whatever of his guilt. So satisfied of it was the magistrate committing him, that he allowed himself to reply, in answer to his denials—"Mr. Bradford, either you or I committed this murder." At his trial Bradford repeated this defence; but the jury convicted him without leaving the box. In the condemned cell the convict denied the perpetration of the crime, but confessed that, tempted by the hope of the plunder, he entered the room for the purpose of committing it; when he found himself anticipated, and the man already dead, he could scarcely believe his senses; to assure himself of the fact he turned down the bed clothes, and in his agitation dropped the knife, and thus it and his hands became besmeared. This, conflicting with his former defence, it is probable the clergyman disbelieved; it was studiously concealed until he had suffered, and he was executed solely on what appeared in evidence on his trial. He died strongly asseverating his innocence, but, says the report,* "He died disbelieved by all." No wonder —the case, as proved, almost amounted to ocular demonstration;

* Chambers' Cases of Circumstantial Evidence.

a stronger one it is impossible to fabricate. Yet this man died for a crime he never committed. His own vile story was the truth. An object of compassion he certainly is not, for, so far as intention went he was morally a murderer; but he was not tried for the intention, he was tried for the fact, and convicted of the fact, and of the fact he was not guilty. And thus man, meaning to do justice, sacrifices man to seeming facts, which, after all, are airy fantasies. The murderer of Hayes was Hayes' footman—he heard his master's disclosure at the supper-table, and was tempted: he entered the chamber, stabbed his master to the heart, robbed him of his money, his gold watch and snuff-box, and escaped to his own bed-room scarcely a minute before Bradford approached. In eighteen months after Bradford's execution the footman made his death-bed revelation.

We now turn to a most melancholy case which happened in this metropolis, and in our own time. Many remain who, doubtless, recollect it. We refer to it with pain because associated with early days long gone, but never to be forgotten. Who has not heard of poor Eliza Fenning? How often have we hung upon the words of Curran, while he discoursed and dwelt incessantly on her fate! What tears of burning indignation did he shed! With what eloquent wrath did he denounce her condemnation. Thousands upon thousands wept along with him, and a kindred spirit, noble as his own, echoed that indignation.

We transcribe the leading incidents of the trial from a manuscript of Romilly's, too much condensed perhaps, but faithful in its outline, and unquestionably accurate. Eliza Fenning was a servant girl, very young and very beautiful, living in Chancery Lane. She was but seventeen years of age. The charge against her was that of having administered poison to her master and his family. The poison was alleged to have been contained in some dumplings she had cooked for dinner. The evidence was entirely circumstantial, and no adequate motive could be assigned for such a deed. One piece of

evidence on the trial should, had it stood alone, have secured her acquittal:—she ate as heartily of the dumplings as any of the party, and was quite as ill as any of those whom she was charged with endeavouring to poison! In addition to this, she had left the dish unwashed which furnished the only proof of the presence of the arsenic. It remained all night in the kitchen, and was found next day exactly in the same condition in which it had left the parlour. In such a state of things one would have supposed a conviction impossible. "But," says Sir Samuel Romilly, "the Recorder appeared to have conceived a strong prejudice against the prisoner; in summing up the evidence he made some very unjust and unfounded observations to her disadvantage, and she was convicted." Words of dreadful import, falling from such authority! A "strong prejudice against the prisoner,—very unjust and *unfounded* observations to her disadvantage;" and from a Judge—a British Judge—and this in a case involving human life! It is impossible to convey a more terrible imputation, unless indeed it be another in this very case. Petitions signed not by hundreds but by thousands, besought the throne for mercy. Application was made to the prosecutor for his signature—the Judge dissuaded him!! Can this be possible? Is it in human nature? Could such a man have filled the office with which, filled as it is now, dignity, and justice, and mercy are associated? Of our own knowledge we speak not—we give the statement simply as we find it in the words of Sir Samuel Romilly, published under the authority of his sons. That there may be no mistake we give the very words of Romilly, as we find them reported from his manuscript;—"The master of the girl was requested to sign a petition in her behalf; but, at the instance of the Recorder, he refused to sign it."* Sir Samuel calls this "savage conduct," and well indeed he might, if he believed it. All intercession was fruitless, and Eliza Fenning was executed

* Life of Sir Samuel Romilly, second edition, vol. iii. 236.

at the age of seventeen. She mildly asserted her innocence to the last, and prayed to God, some day, to make it manifest. When the religious ceremonies were over, the sad procession moved onwards towards the scaffold; as the last door was opening which still concealed her from the public gaze, Mr. Cotton, the Ordinary, made a final effort—"Eliza, have you nothing more to say to me?" It was an awful moment, but her last words in this world were—"Before the Just and Almighty God, and by the faith of the holy sacrament I have taken, I am innocent of the offence with which I am charged."* The door then opened, and she stood, robed in white, before the people. Two old men were executed with her, "and," says a bystander, "as all three stood under the beam, beneath the sun, she looked serene as an angel."† The stormy multitude was hushed at once, and while every eye wept, and every tongue prayed for her, she passed into eternity. Poor Eliza Fenning! so young, so fair, so innocent, so sacrificed! cut down even in thy morning, with all life's brightness only in its dawn!—little did it profit thee that a city mourned over thy early grave, and that the most eloquent of men did justice to thy memory!

When the curtain had fallen upon this tragedy, the fury of the people knew no bounds, and the house of the prosecutor was only protected by the presence of a considerable civil force. But her enemies were active also—the sanctity of the grave was not inviolate; they impeached the purity of her previous life—the life of a girl scarcely seventeen! and a prison official actually made a solemn affidavit, that *in his presence!* her father earnestly implored her to deny her guilt when led out to execution!! It was hardly necessary to contradict so suicidal an accusation; but nevertheless, the father did so, also by affidavit. The temper of the times was such that nothing could prevent a popular demonstration at the funeral, and a mournful and striking one it must have been. The broken-hearted parents

* Times, June, 1815. † Rippon on the Punishment of Death.

led the way, followed by six young females clad in white, and then by eight chief mourners. At least ten thousand persons accompanied the hearse, and thus, every window filled, and every housetop crowded, they reached the cemetery of St. George the Martyr. There have mouldered ever since, all that remains of the young, and after all, the innocent Eliza Fenning, the victim of erring legislation, and of foul individual injustice. After her conviction, and while the error was reparable, Sir Samuel Romilly states that "an offer was made to prove that there was in the house when the transaction took place, a person who had laboured a short time before under mental derangement, and in that state he had declared his fears that he should destroy himself and his family: but all this was unavailing, and she was executed." In all probability this scandal might have been avoided, but for the culpable indifference which prevailed; it was this wretched creature who committed the crime; stung by remorse and misery he admitted it on his death-bed.

Instances have occurred too of mistaken identity, where honest witnesses, intent on the truth, have sacrificed the innocent. A celebrated case of this kind is that of the courier of Lyons. A gentleman named Joseph Lesurques, who had been an officer in the army, removed from his native province to Paris for the education of his children. His character was irreproachable, and he possessed an income of ten thousand francs a-year, moderate, but sufficient for his simple wants. During his residence in the metropolis, the murder of the courier was planned and perpetrated by six conspirators with whom Lesurques had not even an acquaintance, and yet for whose atrocities he suffered. It so happened that a provincial friend, named Guesno, on repaying Lesurques a previous loan, invited him to breakfast on the next day, and at the same table sat Curiol, one of the assassins, whom Lesurques there saw for the first time, being the only one of them he ever saw at all. Yet this occurrence, happening four days after the murder, was made a prominent

feature at the trial! It indeed was true, but it was the only truth proved against the victim. At this time Guesno visited Chateau-Thierry on business, and in the house where he stopped, was Curiol, who alarmed at the noise which the murder made in Paris, had retired there for safety. There Curiol, Guesno, and the landlord were arrested, but, on the examination of their papers were at once released, with the exception of Curiol. Guesno's papers had however been remitted to the central office, and thither as ordered, he repaired next day, to receive them. On his way there, he met the ill-fated Lesurques, who consented to accompany them. The Juge-de-paix not having arrived, the two friends sat down in the ante-chamber. On his arrival he was thunderstruck with information that two female witnesses from the country declared that two of the actual murderers were in the house. "Impossible! (naturally enough exclaimed the magistrate) guilty men would never voluntarily venture here!" To do this functionary justice, he seems calmly and impartially to have investigated the case. He had the women separately examined. He solemnly warned them that life or death might wait upon their answers. He had the accused brought before their accusers one by one. But the witnesses consistent and clear, persisted in their statement, and a committal followed. Seven persons were put upon their trial, amongst whom were Curiol, Madeleine Breban, his mistress, Lesurques, and Guesno. Lesurques was sworn to most positively by several, as being one of the party, at different places on the road, on the day of the robbery and murder. It should be borne in mind the case was quite conclusive against Curiol. "I attended them (said one witness) at dinner at Mongeron; this one (Lesurques) wanted to pay the bill in assignats, but the tall, dark one (Curiol,) paid it in silver." A stable-boy at Mongeron also identified him. A woman named Alfroy, a florist at Lieursant, and the innkeeper and his wife at the same place, all recognised him as of the party there.—At neither place Lesurques declared

had he been present. But the witnesses were positive, were unimpeached, were believed and were mistaken. Lesurques and Curiol were convicted. Guesno though sworn to positively, proved his perfect innocence and was acquitted. Lesurques called fifteen persons of probity to prove an alibi, which was disbelieved in consequence of the folly of one of them, and eighty of all classes, declared his character to be irreproachable. When sentence was pronounced, rising from his place, he calmly said—"I am innocent of the crime imputed to me. Ah, citizens! if murder on the highway be atrocious, to execute an innocent man is not less a crime." Madeleine Breban, though compromising herself, wildly exclaimed—"Lesurques is innocent—he is the victim of his fatal likeness to Dubosq." Curiol then addressed the Judges,—"I am guilty—I own my crime—but—Lesurques is innocent." He afterwards wrote to them from his prison—"I never knew Lesurques; the resemblance to Dubosq has deceived the witnesses." Proceeding to the place of execution, over and over again, he cried out to the people—"I am guilty, but Lesurques is innocent." After the sentence had been pronounced, the horror-stricken Madeleine again presented herself before the Judges to reiterate her declaration, and two other witnesses attested to her having told them so *before the trial.* The Judges applied to the Directory for a reprieve; and the Directory applied to the Council of Five Hundred, requesting instructions for their future guidance, and concluding with the emphatic question,—"Ought Lesurques to die on the scaffold because he resembles a criminal?" The answer was prompt—"The jury had legally sentenced the accused, and the right of pardon had been abolished." The enlightened advocates of "Liberty and Equality," while they usurped the prerogative of vengeance, repudiated that of mercy! Left to his fate, poor Lesurques on the morning of his execution thus wrote to his wife—"My dear friend, we cannot avoid our fate. I shall, at any rate, endure it with the courage which

becomes a man. I send some locks of my hair. When my children are older, divide it with them. It is the only thing that I can leave them." Curiol had disclosed to Lesurques the history of Dubosq, and the fatal mistake which had been made, and accordingly on the eve of his death, he had the following mournful letter inserted in the journals. " Man, in whose place I am to die, be satisfied with the sacrifice of my life; if you be ever brought to justice, think of my three children covered with shame, and of their mother's despair, and do not prolong the misfortunes of so fatal a resemblance."——This wretch was subsequently arrested, tried, and executed for the murder on the 22d of February, 1802. He had in early years been sentenced to the galleys for life for stealing the plate of the Archbishop of Besançon, but he broke prison and escaped. On four occasions subsequently, apprehended for various robberies, he each time broke prison, and had been free only a few weeks when he aided in the murder of the courier of Lyons. The hardened criminal denied everything, but the jury unanimously convicted him, and the last of the accomplices, executed soon after, confirmed the declarations of Curiol, Breban, and Durochat by the following paper:—" I declare that the man named Lesurques is innocent: but this declaration, which I give to my confessor, is not to be published until six months after my death." The Juge de Paix also, struck with remorse for having committed Lesurques, (though in so doing he only did his duty,) sparing neither time nor money in the investigation of the facts, thus terminated a memorial to the government for a revision of the sentence:—" The Calases, the Sirvens, and all the others for whom the justice of our sovereigns had ordered a like revision, had none of them had such presumptions in their favour as the unhappy Lesurques." All was in vain. Lesurques—the guiltless Lesurques died on the scaffold, *the victim of a resemblance.* His widow's sorrows terminated in October, 1842, the eldest son having previously fallen in battle, a soldier in the French army.

The case of John Calas, incidentally alluded to in the memorial of the Judge de Paix, was another instance of recorded butchery; but scarcely needs more than the allusion, its narrative having attained a European notoriety through the noble interference of Voltaire. This poor old man, who had brought up his family in credit, and was remarkable for the affection he bestowed on them, was accused of the murder of the son he loved and who it was subsequently shewn had committed suicide. At the age of seventy he was racked with cruel tortures, and broken on the wheel. As he stood writhing on the scaffold, he was thus addressed by a monster, misnamed a magistrate, who exulted in his agonies—"Wretch, *confess your crime*—behold the faggots which are to consume your body." The poor old father had nothing to declare save that he was about being murdered in the name—the too oft desecrated name, of justice. When the judicial mockery was over, and the wheel and the stake had done their dreadful work, the sentence was annulled,—*Calas and his family were proclaimed innocent*,—the attorney-general was ordered to indict his prosecutors, and a subscription was set on foot for the survivors. This interference, which cost him time and trouble and money, is creditable to Voltaire:—it was a redeeming deed, and worthy of a purer faith than that which he acknowledged. We subjoin with pleasure the letter appropriately addressed to him on the occasion by the great Sovereign who had abolished the punishment of death throughout her empire.

> Sir,—The brightness of the northern star is a mere *Aurora Borealis*—but the private man, who is an advocate for the rights of nature, and a defender of oppressed innocence, will immortalize his name. You have attacked the great enemies of true religion and science—fanaticism, ignorance, and chicane: may your victory be complete. You desire some small relief for the family. I should be better pleased if my enclosed bill of exchange could pass unknown; but, if you think my name, unharmonious as it is, may be of use to the cause, I leave it to your discretion.
>
> Catherine.

We have above recorded a case in France of a man losing his

life because he was guilty of a likeness! Such cases are not confined to France. Here is one—out of many—taken from our own criminal courts. Thomas Geddeley, was waiter in a public house at York, kept by a Mrs. Williams. Her desk was broken open and rifled, and Geddeley disappeared. About twelve months after this a man appeared at York of the name of James Crow, who endeavoured to earn a precarious subsistence as a porter. This hapless man so closely resembled the fugitive Geddeley that many accosted him by the name, the adoption of which he perseveringly repudiated. This however was attributed to his fear of prosecution for the robbery, on which charge he was, at last, formally apprehended. Mrs. Williams selected him from a crowd of others as the person who had robbed her; a maid-servant swore positively to having seen him on the morning of the robbery with a poker in his hand, in the very room in which the desk had been broken open, and several reputable persons deposed without doubt to his identity. To all this he had nothing to oppose but his solemn asseveration that his name was Crow, that he never had been in York before, and that he was not even acquainted with any one of the name of Geddeley. Of course he was disbelieved. How could his defence possibly be true? How could his own mistress be mistaken? how could his fellow-servant be mistaken? how could so many disinterested witnesses who had all known him before, possibly be mistaken? So argued and so still argues man, the very essence of whose nature is its fallibility. And they were all mistaken, and they all went to their graves, mourning the mistake to which innocence was sacrificed.—The real culprit fled from York to Ireland, was executed in Dublin for another crime, and with his last breath confessed the guilt which a guiltless man had expiated. This, say our opponents, in their modern jargon, was "a legal accident"—a mere mistake. No doubt it was so—but how much longer are we to register our mistakes—in blood?

We fear much there are but few circles in which cases are not

extant of innocence thus sacrificed. The following communication received since our first edition is from a lady whose name (were we authorized to give it) would be a perfect guarantee for its authenticity. "I have been greatly disturbed all my life by executions which were not preceded by confession, for when I was but thirteen, I saw a poor woman *with her seven children* fling herself in the snow-covered road of the Minster-close at Lincoln, to intercept the Judge's carriage, screaming for mercy and protesting the innocence of her husband. He had been convicted of sheep-stealing, and was sentenced to die on the following Monday morning. He was so executed. In the same city, at the spring assizes a murderer was convicted; and on the eve of his execution, he confessed to the perpetration of the crime for which the father of these helpless children suffered. Not only had he committed it, but with the aid of an accomplice, he had contrived the circumstantial evidence of which a man entirely innocent was made the victim." Such is the system—a system under which such things are not only possible, but practised—which finds christian advocates!

"A very unhappy case," (of some coincidence with the preceding) says Mr. O'Sullivan, "occurred within a few years, in which a citizen of this State, a young man of fine talents, character, and attainments, fell a victim to this fatal uncertainty of all human testimony. His name was Boynton, a brother of a clergyman, now a resident in Ostego county. He had been staying for a few weeks at a tavern on the Mississippi, some distance above New Orleans. He had been much in company with a fellow-boarder, who was one day found murdered on the bank of the river, within a very short period after they had been seen together, very near to the spot where the body was discovered. The evidence presented by all the circumstances of the case was such that Boynton was convicted of the charge, notwithstanding the most earnest protestations of his innocence, —protestations to which nobody attached the slightest weight.

When placed upon the scaffold, he read a very able vindication of himself, again protesting in the name of his God, that innocence which man refused to believe. When informed that his time was come he broke wildly from those by whom he was surrounded on the scaffold, and rushed in among the multitude, in the most piteous manner crying for help and repeating the assurance that he was innocent. He was soon again secured by the sheriff, dragged back to the scaffold, and, in the midst of his piercing shrieks and heart-rending cries, launched into eternity. Not many months after, the keeper of the tavern, on his death-bed, confessed himself guilty of the murder for which young Boynton had been hung! having, to shield himself from conviction, directed the circumstances so as to procure the arrest and conviction of the latter."*

We will conclude these cases with a soul-harrowing one, vouched by Mr. O'Connell, on his own authority. "I myself (says he) defended three brothers of the name of Cremming within the last ten years. They were indicted for murder. I sat at my window, as they passed by, after sentence had been pronounced. There was a large military guard taking them back to jail, positively forbidden to allow any communication with the three unfortunate youths. But their *mother* was there, and she, armed in the strength of her affection, broke through the guard. I saw her clasp her eldest son, who was but twenty-two years of age; I saw her hang on her second, who was not twenty; I saw her faint, when she clung to the neck of the youngest son, who was but eighteen—and, I ask, what recompense could be made for such agony? *They were executed*—and—THEY WERE INNOCENT."

We will not mar, with any words of ours, the terrible simplicity of this recital. But we do implore of every English mother—by that holy love which links them to each other, even from the sceptred monarch downwards, to that poor, desolate,

* O'Sullivan's Report to the Legislature of New York. 1841.

children-despoiled peasant—by the love of offspring thrilling through them all—we call on them to contemplate this picture —limned with a pencil dipped in human heart's blood.

Oh! who that knows not Ireland, can conceive the cares, the vigils, the privations, the anxieties of that struggling, patient, much-enduring creature as she toiled to rear those children up to manhood. And there they were, at last, the task of love completed—all that a fond mother's wish could have them—her joy, her pride, her hope, her treasure, the safe and certain props of her old age—and they were torn from her, and they were flung into a felon's grave, and she, that poor, forlorn, lonely mother had no companion now but memory. "They were executed, and THEY WERE INNOCENT." When the Book of Life seeks to portray the sublime of desolation, it personifies such agony as this. It shews us "Rachel weeping for her children, and she would not be comforted, because they are not." Surely there can be no greater agony save in the consciousness of him who causes it.

But why continue this catalogue of mistakes, miscalling themselves certainties? Almost every man's memory may swell the list. Sir Fitz Roy Kelly declared in the House of Commons that he found "seventeen cases in the present century of accused men having been sentenced to death, though their innocence had been subsequently established and rendered as manifest as that of any man now living; of these, eight were hanged, and one was within four hours of his execution, when the pardon arrived." We must however advert to a most fearful instance mentioned by Mr. Livingstone in his report to the legislature of Louisiana: "I have seen," says he, "in the gloom and silence of the dungeon, the deep concentrated expression of indignation which contended with grief; have heard the earnest asseverations of innocence made in tones which no art could imitate; and listened with awe to the dreadful adjuration poured forth by one of these victims, with an energy and solemnity that seemed

superhuman, summoning his false accuser and his mistaken judge to meet him before the throne of God. Such an appeal to the high tribunal which never errs, and before which he who made it was in a few hours to appear, was calculated to create a belief in his innocence:—that belief was changed into certainty—the perjury of the witness was discovered, and he fled from the infamy that awaited him. But it was too late for any other effect than to add one more example to the many that preceded it, of the danger and, I may add, impiety of using this attribute of the divine power, without the infallibility that can alone properly direct." This is vivid and eloquent, and wise, and does equal honour to the man who promulgated such truth, and to the State which so beneficially adopted it.

So far in reference to those who have been executed, and whose innocence has been subsequently ascertained. To what a frightful length, however, might not this list extend, but for the exertions of humane and worthy men! There was a case, said Mr. Harmer, in his evidence before the Commissioners on Criminal Law, of "a young man who was capitally convicted upon apparently the clearest possible evidence; I conducted the prosecution against him, and could not imagine there was any doubt of his guilt: but the young man protested his innocence, and he communicated facts to the then Governor of Newgate, which impressed him with the belief that the young man was innocent, and he begged me to see him. I heard the young man's statement, and commenced a minute enquiry into the circumstances, and I was at last fully satisfied that he was innocent. I consequently memorialized the Secretary of State; but it was not without great difficulty I procured his pardon, after he had been in Newgate ten months, under sentence of death." This is a striking case, indeed, from the circumstance that the guiltless convict owed his pardon to the Solicitor employed to prosecute him. But it was every way characteristic of Mr. Harmer, than whom a kinder-hearted man never existed. Doubtless he

was stimulated to this exertion, by the recollection of a mournful case in which he had been concerned for the prisoners. He does not specify the offence, but murder it must have been, because in no other did execution follow so soon upon conviction. "I remember," said he, "a case, where, in a little more than forty-eight hours, enough could have been shown to justify a suspension of the judgment, but the *men were executed before I had time to investigate.* Directly I began to make enquiries, fact upon fact was developed, which would not only have justified a suspension of punishment, but would doubtless have obtained *for the unfortunate men a free pardon!!*" (Page 88.) How appalling! how horrible is this! This cold-blooded system of speedy execution was at last abolished, through the exertions of the late excellent Mr. Aglionby, in the year 1836. It saved England from a further injustice. In the very first case of murder which was tried after the Act passed, an innocent man was convicted at Exeter. It having been clearly proved, during the protracted interval allowed for investigation, that a mistake had been made as to the man's identity, his life was spared!* But well was Mr. Harmer warranted in saying that time for enquiry should be granted; for what says even a more competent authority, at least, during the period of which he speaks?

"I think," said Sheriff Wilde in his examination in 1836, (p. 101,) "many innocent persons have suffered; I think that if the documents at the Home Office are examined, many instances will be found, in which, by the exertions of former sheriffs, the lives of many persons ordered for execution have been saved." He was well authorized to say so. This most estimable gentleman is still alive, so we may not speak of him as we sincerely feel; but we shall chronicle his acts—they are his best eulogy.

* Report of the Abolition of Capital Punishment Society, 1845.—The convict's name was Edmund Galley, condemned July 28, 1836. His identity had been sworn to by four or five witnesses: but by the indefatigable exertions of Mr. Faulkner, of Bedford Row, he was ultimately proved to have been *in Kent* when the *Devonshire* murder was perpetrated.

During the seven months of Mr. Wilde's shrievalty, he *saved the lives* of six innocent persons who had been actually *ordered for execution!!* The records and the documents are at the Home Office. The first case was that of Anderson and Morris, accused of robbery with violence. The prosecutor stated that he met a woman who took him to a house in Westminster, where he was robbed and brutally treated by the two prisoners. They declared their innocence, and a woman, who with some difficulty, made her way into court, fully bore them out. She swore that she cohabited with Morris, and having met the prosecutor, she took him to Morris's house, who returning and finding a man there, he kicked him into the streets, and that was the whole of the transaction. Knowlys, the Recorder, said Mr. Wilde, took "a strong impression" from what had passed, *against* the prisoners, and after a short address from him, they were convicted, and finally ordered for execution. Providentially for the prisoners, Knowlys' "strong impression" urged him onward; he called the witness Hannah Morris up, told her she was "a bad, corrupt woman," and consigned her to the dock, to be prosecuted for perjury! Now the humane Sheriff, who heard the trial, had "a strong impression" also—HE *believed the witness;* when therefore he found that the wretched men were actually ordered for execution, he hastened to Sir Robert Peel, who, as usual, devoted himself to the cause. It appeared the prosecutor, at the police office only accused the prisoners of a common assault! the robbery—the capital part—was entirely an afterthought; it was however a case which gave Mr. Wilde much trouble; need we say, much anxiety also? It was not until the day of their execution was near its dawn that the reprieve was granted. At dark midnight, when on their knees, expecting the fatal approach of the official to warn them that their hour was come, mercy's own messenger appeared with the assurance of their safety—it was as the angel's visit, and their chains fell off and they were free—they were wholly pardoned. The

prosecutor never dared even to shew his face on the trial of Hannah Morris. All this was not effected without the greatest difficulty, indeed he generously awards to others a share of his own deserts: "If I had not had the assistance," said he, "of Mr. Wontner, the governor of the prison, and of his deputy, Mr. Barrett, the facts and circumstances establishing the innocence of these prisoners, would never have been made to appear."

The next is a case so monstrous that it is difficult of credence; still it is true. At a time when juries, aghast at the frequent executions for forgery, insisted upon such strictness of proof as to make conviction almost impossible, and acquitting, very often where the proof was perfect, a man named Smith pleaded guilty to the charge. All remonstrance was lost on him; his friends in vain advised him; in vain the Judge urged him to take his trial; he persisted in his plea, and sentence of death was passed on him. In due time he was ordered for execution; the condemned sermon was actually preached. In such a crisis the indefatigable Sheriff was appealed to, by a respectable tradesman of Cornhill, the prisoner's relative. He proceeded to the dreadful cell of the condemned, with a heavy heart, because apparently on a hopeless mission. There, however, he heard the explanation of his plea—the frightful explanation! His case was instituted by the Bankers' Committee. Some short time before the sessions, their solicitor authorized Mr. Cope, then city marshal, to assure Smith that if he pleaded guilty, his life should be saved. He did so relying on that promise, and now behold him on his truckle bed, within four days of his execution. The Sheriff, scarcely crediting his senses, hurried to the Home Office, and there, as usual, was met by the prompt humanity of Sir Robert Peel. The Minister, as much astounded as the Sheriff, at once solicited the aid of Lord Lyndhurst, then Lord Chancellor—a rare combination. A most vigilant investigation instantly ensued; prosecutor, solicitor, city marshal,

and others, were summoned to the Lord Chancellor's private room at the House of Lords, and underwent a strict examination. The Sheriff's narrative was true. The life of Smith was saved. This awful detail is on record at the Home Office, and, reader, this occurred in the metropolis of England and in the nineteenth century!

The third case was one of two poor men—humble destitute Irishmen—convicted, on circumstantial evidence, of a revolting crime. On a patient scrutiny at the Home Office, the prosecution was shewn to have been the result of a conspiracy. This appeared, partly by the improbability of the prosecutor's story, and partly by direct evidence submitted to the Secretary of State. The men's lives were saved, and, says the Sheriff, "I had no doubt of their innocence." The last case was that of a man named Brown, capitally convicted of robbery, and left for execution. He was saved; but not, says the generous Sheriff, ever seeking to despoil himself of the meed of his humanity, "until his master, Mr. Lingham, a wine-merchant, had been exerting himself for many days, to procure a remission of the sentence." Here, then, were the lives of six of his fellow-creatures saved, through the instrumentality of one noble-minded man, in little more than the moiety of a shrievalty. Brief, indeed, is the interval between the order for execution and the execution itself; and there can be no doubt whatever, that every one of these unfortunates must have perished ignominiously, had it not been for the incredible efforts of Mr. Wilde, and the facilities afforded to him officially. We call attention to these cases especially, because they are not generally known, and because there can be nothing apocryphal about them. We call attention to them also, for another most important reason, namely, that with all our care, and all our precaution, we are just as likely to be wrong as right.

In these cases, there was, first, a presiding Judge, and the safeguard of a Jury. In the next place, there was the painful

consideration of the Recorder's Report, by the King himself personally in Council.* Nothing can be more solemn and deliberate than this proceeding. The Lord Chancellor and the Lord Chief Justice, with other eminent members of the Council, always attended to advise the Sovereign. The evidence on each trial was weighed with the gravity commanded by the occasion; the heinousness of the crime, and the justice of the conviction, being the guides of the advisers in awarding the punishment. Of course the penalty of death was not decreed, save where the guilt was deemed to be indisputable; and yet here were six human beings snatched from the scaffold by one earnest man, who proved to demonstration, that judge and jury, and chancellor and chief justice, with all their sagacity, and all their care, were unanimously mistaken! If this happened in London, where there was the safeguard of a council—fallible as it was—what must have happened in the provinces, where there was none? If it be said, These men might have been guilty of a portion of the charge, though not of the capital part of it; the answer is, The jury convicted them of the *capital* part, and the judge sentenced them to *death*, and the council agreed with judge and jury, and actually *selected* and ordered them for *execution;* and executed they would have been, every man of them, had it not been for Mr. Wilde. Oh, but the Home Office may only have had a doubt! What right have we to assume any such thing? In the cases of two out of the six, there could have been no doubt, as these two men, Anderson and Morris, were pardoned altogether. Strange to say, too, this was the very case in which the greatest difficulty was made, as the respite was not given till half-past eleven at night, and the execution was appointed for eight o'clock next morning. All the preparations had been perfected. Mr. Wilde states, that four men out of the six he believes to *have been innocent of any*

* We speak in the past tense, because the Recorder's Report was, by an Act, passed in 1837, discontinued under a female reign.

part of the charge. A doubt at the Home Office, forsooth! What kind of assumption is this where human life is at stake? The jury, the judge, the council, had no doubt. Aye, but the sheriff created the doubt from facts subsequently discovered. Alas! what gambling with men's lives is this! These six men would have been hanged, save for the volunteer philanthropy of this christian man, who gave his time, his talents, his money, and his toil, in behalf of hapless strangers. Where are we to find such men, at once so able and self-sacrificing?* Let Sir Frederick Pollock answer: "Though I believe undoubtedly the Sheriffs of London are, in general, conspicuous for an active, humane, and correct discharge of their duty; they have not all, and cannot have, the means of bringing to the investigation of such subjects the same facility and the same unsparing exertion that Mr. Wilde afforded while he was Sheriff. * * * It is impossible to speak in too high terms of the zeal, humanity, unsparing labour and expense, which he bestowed upon those occasions, but the result satisfied me that the parties were *in several instances guiltless of any crime*, and in all, the cases were such as did not justify capital punishment; and Sir Robert Peel, after *much labour* in the investigation, was of the same opinion. * * * My impression is, that several of these cases were cases of *perfect and entire innocence*, and that the others were cases of innocence as to the *capital* part of the charge. I had frequent communication with Mr. Wilde on them as they proceeded."†

Mr. Wakefield, speaking of these cases, and of cases such as these, of which he was himself personally cognizant, declares, that "the innocence of these men was perfectly clear; but it never would have reached the Secretary of State, if infinite pains had not been taken to convey it thither by volunteers in the labour of saving life. In every case, I believe, and in most

* Second Report of Commissioners on Criminal Law, 1836, p. 100.

† Ibid. p. 85.——Sir Frederick Pollock is the present Lord Chief Baron.

cases, I know, where the sentence of the Council is reversed, much is owing to the exertions of the keeper of Newgate, and the sheriffs for the time being. It follows, that the persons whose lives were properly spared after the decision of the Council against them, would have been improperly hanged, if some officer of the prison had not volunteered to enlighten the Judge. The statement is hardly credible; but it is a plain matter of fact, on which every one may form an opinion."* Yes, in truth, every man of the six would have been hanged, had it not been for Mr. Wilde! We have heard it said—Oh, this is not the fault of the law, but of the administration of the law! Much it mattered to the butchered men whose fault it was. In the cases quoted, judge, jury, council—all of them were at fault—all of them were elaborately in the wrong. They taxed their understandings to the utmost, and all their wisdom was but foolishness. And this is man's (as we believe,) very best tribunal! Who, after the perusal of these cases, can doubt the dreadful statement made by Mr. Wilde to the Commissioners, that "he believed many innocent men had been executed?" Thanks indeed to him, they were not increased by six. But what right have we to calculate in future on such interposition? Well and truly did the Chief Baron allude to the paucity of such men as this. Allowing to many all his benevolence, how few there are with courage for so unpromising an enterprise. How few with nerve to endure the dungeon's gloom. How few with sagacity clearly to discriminate between crime's prevarication and the wail of innocence. How few in circumstances to incur the cost. How few with perseverance to encounter the suspense, the pain, the gnawing vicissitudes, that eat into the heart during such an investigation! A man who dwells amongst us did all this, and chance alone has led to the discovery—and his reward? In ancient Rome, for but one-sixth of this, a civic crown would have proclaimed it. Modern England leaves him

* Wakefield on the Punishment of Death, page 124.

to his consciousness; it costs the donor little, but still it is "an exceeding great reward." Deeds such as these require no recognition. Sublime and self-requiting, they seek no blazonry and no memorial. "They are recorded in the heart from whence they sprang, and in the hour of adverse vicissitude, should it ever come, sweet will be the odour of their memory, and precious the balm of their consolation."*

When such condemnatory cases are adduced, the answer is not wanting: They were in by-gone times—such casualties could not now occur. It is not so very long since Mr. Wilde was Sheriff, and had it not been for him, we know what would have happened. And had it not been for those derided abolitionists, we should have haply seen within the last few months two additional victims to human fallibility. Indeed, indeed, delude ourselves as we will, we are quite as liable to error as our ancestors. We have by no means improved upon those days when our senate hung upon the tones of Pitt and Fox and Wilberforce, or those when Mansfield sat in judgment, and Chatham was Prime Minister. Happily, however, modern self-sufficiency has been spared the shame of recording so many of its mistakes, in blood. But to such mistakes we are as liable as ever. Even since the first edition of these pages, two shocking cases of the cruellest injustice have been dragged to light. Alas, how many may remain in darkness! Not many months ago, a man named Markham, while walking openly in the streets of London, was arrested for uttering a forged note. In his terror, he gave a wrong name—clearly, in his terror; for he gave a right address. There was no use in his firm asseverations that he was innocent. This was no case of circumstantial evidence. A respectable witness swore most positively to him as the man who passed the note, and, no doubt, swore so conscientiously, declaring that he could not possibly be mistaken. He was tried, convicted, and sentenced to four years of penal servitude. Six months of this

* Curran.

punishment he actually suffered. The first two were passed in Newgate, picking oakum, and herding with murderers, garotters, burglars, and men not to be named. Thence he was transferred to Millbank, where he was locked up each evening in a separate cell, at half-past five, to rise at six next morning. They then removed him from Millbank to Pentonville, to endure the horrors of three months' solitary confinement, and to wear a mask of cloth! "In this prison (says Mr. Rose) the convicts are kept so separate and so solitary, that, *even in the chapel*, each man is enclosed in a wooden box, so that he can see no one but the clergyman!!" Such was his three months' dreadful solitude. And what solace had he in that solitude!—of what had he to think? Of what, but of that which was enough to drive him mad? Of what, but of the poor home, which, lowly as it was, his toil had brightened—of the fond, faithful wife, who had literally sold the clothes from off her back, and the very bed she lay on, to provide for his defence—of their dear infant babe, destined to bear through life a felon father's name! and yet that worse than orphan was not more guiltless than its ill-fated parent!

According to testimony given in another case, at the Mansion-House, six months subsequent to Markham's conviction, it was proved that he had been mistaken for the real culprit. Through the exertions of Mr. Rose, the Under-Sheriff, and of Mr. Davis, the Ordinary of Newgate, this was demonstrated, and Markham, shaking from his feet the dust of Pentonville, was a freeman, and—a beggar. He received a pardon!—a pardon for what? Remission of the remainder of his sentence one could understand: but pardon implies guilt, and guilt there was not. Here, then, was an instance in our own boasted day—that perfect day when people cannot err—in which judge and jury and witness, were, all three, mistaken! Alas, perfection is not given to earth; and the day of human nature's infallibility neither is, nor was, nor ever will be, in this world! Let us not act, then, as if it had

arrived. Let us not legislate as if we could not err, when should we chance to do so, our error is irreparable.

Does this case stand alone? Within the last few months, and during the same shrievalty, another innocent man has been convicted and sentenced also to undergo four years of penal servitude. His name was Martin, and the charge was highway-robbery. "I heard this man tried (says Mr. Rose), and doubted his guilt." So did the reverend Ordinary when he came under his care. These two christian men, therefore, instantly commenced a laborious investigation, the progress and result of which cannot be better stated than in the words of the Under-Sheriff. "We ransacked Bethnal Green for three days, and got undoubted evidence that he was not guilty: nay more, we discovered who was the guilty man. Martin was pardoned, and, not long since, he stood in my office, *an emaciated wreck of his former self.* Before he went to Millbank, he said he didn't know his own strength, and could work without fatigue the longest day."* Well, this is sad enough, assuredly; but a mistake was made, and we may make atonement. Such has not been the tone of our legislation. We were too intent on devising penalties, to provide compensation when their infliction proved unjust.† These guiltless felons, therefore, must find a refuge

* Times, January 10, 1857.

† We hope soon to see this omission remedied, and willingly congratulate the parish of Marylebone on assuming the initiative in such a work, as is proved by our extract from their last vestry proceedings:—

REPARATION TO PERSONS INNOCENTLY CONVICTED OF CRIME.

Dr. BABBAGE, as chairman of a committee appointed on this subject, brought up the report of a committee and the form of a petition which the committee recommended should be presented to Parliament upon the subject. He remarked that this was a subject based upon the immutable principles of humanity and justice, and he believed if the parish of Marylebone would take it up other districts would follow. The following were the principal points of the petition:—"Owing to the unavoidable imperfections of human tribunals, it must occasionally happen that persons are convicted of crimes of which they are afterwards proved to be innocent. Thus it

in the public sympathy, or find it in—a workhouse! Such vile injustice, even when comparatively less oppressive, did not escape the vigilant humanity of the great philanthropist. On the 18th of May, 1808, Sir Samuel Romilly introduced a bill giving compensation at the discretion of the Judge who tried the prisoner, to such as were wrongfully accused and were acquitted. But the county rates, strongly represented in both Houses, at once revolted against such expensive benevolence, and he withdrew the measure. If this proposal was deemed equitable in case of a just acquittal, how much more so should it be considered in that of an unjust conviction!

But revelations such as these of the sufferings of innocence, —and proved demonstratively to have been those of innocence— suggest reflections even still more serious. Not many years ago, these two men, whose cases we have cited, would have been subject to the punishment of death, and, in all human probability, would have undergone it. Markham, beyond all question, would have suffered. His alleged offence was otherwise inexpiable. Their now manifested innocence would have availed not: as in poor Shaw's case, a pair of colours might have been flourished over their graves; but in those felon graves, they would have festered long before their innocence was discovered. For two more victims the law would have been responsible. For two!—who can say

appears, that through mistake as to identity or other causes, innocent persons have not unfrequently suffered a portion of the punishment for the crime of which they have been convicted, before their innocence has been established. That, as the law at present stands, the only reparation made is the grant of a free pardon for an offence which has not been committed. The injured man is then allowed to return into society with blighted character and ruined fortune. That this state of the law is not only unjust, but that it is calculated to bring the administration of our laws into disrepute, and the vestry therefore pray that a law may be passed to enable some competent tribunal to pronounce the reversal of the original sentence, and also to afford such other relief as the justice of the case shall require." Dr. Babbage moved the adoption of the petition by the vestry, which was seconded by Mr. Bridgman, and carried unanimously.

how many? Well indeed might Sir Robert Peel alarm himself when he reflected from what he had been saved in seven short months, and remembered that he owed it to the volunteer humanity of a kind-hearted official. Our own belief is that many, very many, have been so sacrificed. The journals of this very week record two cases, and one of them in its circumstances and its consequences perfectly appalling.* Let us not be told this could not be in cases which are capital. Far, very far from us be such an opinion! And far from our pure courts of justice be such a reproach! Who can doubt that where the liberty of their fellow-creature is at stake, our judges and our juries strain all their energies to arrive at truth! And yet we have seen, with all the learning and wisdom and experience of the one, and all the patient, pains-taking sagacity of the other, how often it has eluded them. Such are the mistakes, the inevitable mistakes, incidental to humanity; and still, in their despite, it dares to usurp the attribute of the Infallible!

These cases, and many similar to them, have made, and are making, their impression on the people; it is impossible that they should not: a system liable to make such mistakes, and inoperative for good where it makes *no* mistakes, must inevitably work its own reform. There can be little doubt such reform would have come ere now, had Sir Robert Peel survived. Indeed we have indisputable authority for stating that those cases which occurred during his secretaryship, made a deep impression on the great statesman's mind. That mind was not one doggedly to cling to error, chained down by the dogma of consistency—a doctrine, which means, that once in the wrong, man is always to remain so, untaught by time, and uncorrected by experience. On their last interview, Sir Robert thus addressed the Sheriff:—"These repeated applications, and the result of them, give rise to some serious and alarming reflections! You have interfered in five or six cases. *What am I to think of the*

* The Times, January 19, 1857.

course of justice during those years when there have not been the same means which you possess, nor the same exertions which you have used, to investigate the truth?" No doubt, indeed, it was in trembling earnestness he asked the question. Had not his own nature been kin with that of the Sheriff—had he not nobly, heartily, and indefatigably seconded his exertions—six innocent fellow-men would have met a premature and ignominious death. And then, alas, how keenly would he have felt the solemn reflections of the great Chancellor of France in the contemplation of such a terrible contingency!—

"Truth (says D'Aguesseau) lifts up the veil with which probability had enveloped her; but she appears *too late!* The blood of the innocent cries aloud for vengeance against the prejudice of his Judge; and the Magistrate passes the rest of his life in deploring a misfortune which his repentance cannot repair."

Suppose, however, that we were always in the right. Suppose we never slaughtered the innocent, which has been done, we fear, in but too many undiscovered instances, what has been the effect of these appalling perpetrations? We appeal to facts. Only let the crime be monstrous, and its commission clear, does not one of two things invariably follow?—The convict is changed into a hero or a saint! If the first, his sayings and doings are all duly chronicled; he becomes an object of interest —his lunatic desperation is set down as courage—ladies of station, who *sat through his trial,* now seek his autograph, and the rope that hanged him is sold by inches, as relics of the brave! Have we not seen all this? Or, he starts as a candidate for canonization. Forthwith he is proclaimed a pattern penitent. Fragrant with the odour of sanctity, and refulgent with the radiance of cant, he passes directly from the scaffold into paradise! This interest excited by malefactors, discreditable as it is, has been handed down to us, by the leaders of *ton,* at all events from the time of Horace Walpole. "Robbery (says he, in

a letter to a friend in 1750,) is the only thing which goes on with any vivacity, though my friend Mr. Maclean is hanged. The first *Sunday* after his condemnation, three thousand people went to see him; he fainted away twice with the heat of his cell. You can't conceive the ridiculous rage there is of going to Newgate; and the prints that are published of the malefactors and the memoirs of their lives and deaths set forth with as much parade as, as,—Marshal Turennes—We have no generals worth making a parallel."*

Surely, surely, exhibitions such as these can in no way operate on the public mind, save to disgust or to demoralize it. Deter, they do not. There never was an interval in our annals, within which so many murders have been crowded, as within the last five years. Yet there are men so infatuated, as actually to found an argument upon this! What! they exclaim, Is this the time, when murders have become of every-day occurrence—is this the time to abolish capital punishment? The very time. The time of all others. What time so fitting as that when every district in our city, and every dock in our assize-towns, loudly proclaim the failure of our remedy? It will be abandoned, at last, as it has been abandoned in every case but this; though, as in the others, not until it becomes practically inoperative. Yet, why should we remain unadmonished by experience? In every single instance of repeal, self-deluded men struggled zealously, and too long successfully, to retain the punishment—and behold the consequences! From 1810 till 1845, upwards of 1400 persons were executed for crimes which, within those dates, ceased to be capital.† Fourteen hundred human beings immolated at the shrine of what is now conceded to have been a fanciful expediency! Cut off in the middle of their sins, and, it may be, but in the dawn of their repentance. Should this have been?

* Walpole, Letters to Sir H. Mann, vol. ii.

† Fourth Report of the London Committee of the Society for the Abolition of Capital Punishments, March 14, 1845.

Yes, said the civilized inhumanity of England. No, said the humane barbarism of Otaheite. How humiliating the comparison! Let us be rebuked and taught by it. Let Coke's "accursed tree," the last remnant of our feudal cruelty, share the fortunes of the stake, the rack, the thumbscrew, and the gibbet. Let Parliament take the grace of the initiative—let it have the credit of, at least, one repeal—let it save us from a repetition of the "pious perjuries," in all ways so disastrous; let not the desecration of the jury-box anticipate the country's demoralization. Oaths, as administered in our courts of justice, are meant as the links to bind men's souls to heaven; these links once severed, the sanctity of social life is gone, and with its sanctity, its safety. We are not theorizing! the most flagrant verdicts have been already cited, returned by juries, rather than hazard a capital conviction; so flagrant and so frequent, that, as we have seen, law and property could not co-exist—witness the forgery code. Is there no danger that murder may come to be included in the category? Lamentable to say, such things are in progress. In 1847, a woman of the name of Sarah Chesham was indicted at Chelmsford for the crime of poisoning; all considered the case proved against her, but she was acquitted. The rumour was, that an influential juryman felt scruples about taking away life. Again in 1848, the very next year, she was indicted for the murder, by poison, of her own children, and she was a second time let loose upon society. Encouraged by this conflict between law and conscience, she tried a third experiment and poisoned her husband—for this she was executed. It was said that fourteen victims were sacrificed by this fiend; society would have been rid of her at the first trial, save as a show and a scarecrow, had the punishment been secondary.

"Two criminals," says Mr. Ewart, "Battersby and Wilkinson, were tried at York, in 1851; the proof of murder was, to all common apprehension, clear. The Judge told the Jury that

it was difficult to believe that the death was caused by manslaughter; yet the Jury returned a verdict of manslaughter.

"In January, 1852, Thomas Bare was proved, by the strongest evidence to have murdered his own wife; he even acknowledged that he deserved to be executed—yet he was acquitted by the Jury. The *Times* of that date thus concludes a leading article:—'If there be such a crime as murder, this is murder, and murder of no common atrocity.' It adds, 'that in cases involving capital punishments, the Judge, Jury, Home Secretary, and Public, contend to mitigate the crime of murder.'

"Last year, 1855, at Maidstone, during the spring assizes, Elizabeth Avis Dawes was tried for murder; her guilt was clear—she afterwards confessed it—yet she was acquitted. 'A memorable example,' says the *South-Eastern Gazette*, 'of the impunity afforded to murderers.'

"In the case of the Matfen murder, tried on the 27th of March 1856, at Durham, the guilt of one prisoner appeared certain. A juryman, however, told a person who can be produced, that they all agreed on a verdict of acquittal, *rather than the man should hang.*' I can," said the Honourable Member, in conclusion, "produce instances of jurors having stated that they would have found prisoners guilty, as they were bound to do; but, when they learned from the Judge that the penalty would be death, they resolved on an acquittal."

So far Mr. Ewart, who has devoted his public life to the mitigation of this dreadful code. Let him remember Romilly, and take heart. Branch after branch of the "accursed tree" are lopped away, and the axe is at the root.

There is a class of cases on this subject with which every man's mind must be familiar—cases of death by duelling. What is death inflicted in a duel, but a murder? Our law so defines it. Our Judges so declare it. And yet, in nine cases out of ten, an acquittal follows in the teeth of proof. How often have we seen the death proved, the cause of it unquestionable, the party

identified, the law clear—and no conviction. What expedients have we not seen resorted to! What mystifications as to identity! What affected doubts! What legal quibbles! Does some case of unusual interest occur, it is then that law asserts its vindication. The vulgar world is all awe and wonder. What solemn parade—what pompous preparation—what a professional array—what judicial paraphernalia! All doubt disappears before the daylight proof—but, lo! a christian name has not been put in evidence—and—*tabulæ solventur*. We remember well an early case in Ireland (The King *v.* Fenton), which struck us at the time for the novelty of its principle. Two young gentlemen, principal and second, were tried for murder in a duel. The case was proved even superabundantly, all by eye-witnesses and actors on the scene. There was no reluctance to answer, lest of self-crimination. Each described his share in the transaction, as if its incidents covered him with glory! The Judge—an able, learned, and, above all, a most humane one—after carefully summing up the evidence concluded thus: "And now, gentlemen, having detailed the facts, it is my duty to expound to you the law. If two persons proceed to fight a duel, and one kills the other, it is murder in him, and murder in all aiding and abetting him. That is the law of England, and so I lay it down to you. If the facts are believed by you, the case amounts to murder—but a *fairer* duel than this I never heard of." The result was not long doubtful. Such is the consequence, and such must ever be the effect, of setting public opinion and the laws in conflict.*

The Judges themselves, ever tardy in countenancing innovation, are opening their eyes to the evils consequent on the system. In 1847, a Committee of the House of Lords solicited their individual opinions on the subject. Some declined to

* In Louisiana, a duellist killing his antagonist is liable to imprisonment for not less than two nor more than four years, and forfeits for ever all his political and certain of his civil rights.

answer a question, which, perhaps, they thought was rather for the Legislature, than the Bench. Amongst these were Lord Denman and Sir William Maule. Chief Justice Wilde refused to pledge himself by a hasty answer, declaring, however, that he "considered the objections to the punishment of death as *very great.*" Baron Richards (of the Court of Exchequer in Ireland,) "had not formed a very decided opinion, but was inclined to think that transportation, attended with stringent regulations, might be substituted for the punishment of death." Mr. Justice Wightman gave a clear opinion.—"There can be little doubt," said he, "that a secondary punishment may be made so severe, as to be a sufficient substitute for the punishment of death." What says Mr. Justice Coltman? "I am disposed to think that imprisonment for life, without any remission of the sentence, might be substituted for capital punishment. Many guilty persons now escape, who would then be convicted. I do not think the apprehension of death operates much on the mind of a man meditating a great crime."

To these grave authorities, we add, with pride and pleasure, the reply of a coeval, and also a coequal one, who still adorns the justice-seat in Ireland: our saying that we hope he may continue long to do so for Ireland's sake, is not merely the aspiration of an ancient friendship, but a proof that neither time nor absence can lessen our interest in the land we love. To the question put to Mr. Justice Perrin—"Do you think any punishment, by transportation or imprisonment, would be a sufficient substitute for death?" he answers thus—"I do; I am convinced that juries acquit or disagree from an apprehension of taking away life." The preceding pages afford too glaring proofs of the truth of that conviction. Fortified then by these venerable authorities, we advocate the repeal of capital punishment,

Because—The giving and the taking away of life appertain exclusively to God.

Because—Being fallible, we should not punish, when, if wrong, we have no power of reparation.

Because—The crimes in respect of which it has been repealed, have not increased, notwithstanding a progressing population.

Because—Executions, by hardening and brutalizing the human heart, produce the evil they are intended to restrain.

Because—By inducing juries to evade their oaths, it defeats the end, and degrades the dignity, of justice.

Because—While its severity deters prosecution, the uncertainty of its infliction gives encouragement to crime.

Because—Our abhorrence of bloodshed often gives immunity to guilt, and our proneness to err but too often sacrifices the innocent; and

Because—Its discontinuance, in some portions of Europe and America, has been adopted with advantage to their respective communities.

"Even in the States where, though not as yet totally abolished, it has been comparatively circumscribed in its application, no evil consequences have ensued."* "Massachusetts," says the tenth annual report of the Prison Discipline Society of Boston, "where seven crimes are punished with death, is no more secure in person and life than Pennsylvania, where only one, and New Hampshire, where only two crimes are so punished!"

The advocates of abolition have frequently, and not unreasonably, been asked what substitute they would propose for the punishment of death. Our substitute is based on the principle of Beccaria: "It is not the intenseness of the pain that has the greatest effect on the mind, but its continuance. The death of a criminal is a terrible, but momentary spectacle, and therefore

* Appendix to the Second Report on Criminal Law, 1836, page 118.

a less efficacious mode of deterring others than the continued example of a man deprived of his liberty, condemned as a beast of burden, to repair by his labour the injury he has done to society." We would propose, therefore, as a substitute:—

Perpetual Imprisonment—*Certain and Incommutable.*

Hard Labour for Life, its produce being for the public benefit.

The Silent System one day in each month.

A Strict Exclusion from the External World in every way.

The most Frugal Fare compatible with health.

The Prison to be appropriated exclusively to the Convicts for Murder throughout the United Kingdom, to be built on an elevation, visible, but secluded, to have a black flag waving from its summit, and on its front inscribed—

The Grave of the Murderers.

Since these pages have appeared, this substitute punishment has been by some considered rigidly severe. It is so intended. We write in no strain of sickly sentiment, but in a spirit of the utmost sternness. Holding, as we do, that the shedding of man's blood by murder is both sinful and criminal, in the highest degree, we know of no permissible penalty too severe for such atrocity. And such penalty we would have enforced without a chance of commutation, as we would indeed every other punishment. Deprecating undue severity in our sentences—once passed, they should be carried out. Commutation is a censure on the law, and all uncertainty in the ministration is the source whence its repeated violations spring. Good men and simple men are easily deceived into humane recommendations, and society is at this moment imperilled by the "felonious piety" of a counterfeit repentance.

APPENDIX.

THE following is the punishment for murder prescribed by Mr. Livingstone's code for the State of Louisiana. It has been now in force for nearly thirty years, and has been found quite efficient. The first edition of this pamphlet was published before we received the volume whence it has been transcribed.

"MURDERERS shall be strictly confined to their respective cells and adjoining courts; in which last they may be permitted to labour, except for two months consecutively in every year, commencing on the anniversary of their crime, during which period they shall only come into the court during the time necessary to cleanse the cell; and, on the anniversary of the commission of their crime, the convict shall have no allowance of food for twenty-four hours, during which fast he shall receive the visit of the chaplain, who shall endeavour by exhortation and prayer to bring him to repentance.

"Murderers shall receive no visits, except from the inspectors, the wardens, officers, and attendants of the prison, and from those who are constituted visitors of the prison. They shall have no books, but selections from the Bible, and such other books of religion and morality as the chaplain shall deem proper to produce repentance and fix their reliance on a future state.

"The fast shall not be suffered when the physician shall certify that it will be dangerous to the health of the convict.

"The convicts who have not learned to read may be instructed by the teacher.

"No murderers shall have any communication with other persons out of the prison than the inspectors and visitors: they are considered dead to the rest of the world.

"The cells of murderers shall be painted black within and without, and on the outside there shall be inscribed, in large letters, the following sentence—

"'In this cell is confined, to pass his life in solitude and sorrow, A. B., convicted of the murder of C. D. His food is bread of the coarsest; his drink is water, mingled with his tears; he is dead to the world: this cell is his grave; his existence is prolonged that he may remember his crime, and repent it, and that the continuance of his punishment may deter others from the indulgence of avarice, hatred, sensuality, and the passions which lead to the crime he has committed. When the Almighty, in his due time, shall exercise towards him that dispensation which he himself arrogantly and wickedly usurped towards another, his body is to be dissected, and his soul will abide that judgment which Divine justice shall decree.'"

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"*It may seem an omission, in a work professing to give the Orators as well as the Statesmen of the last age, that Curran should not appear among them—the greatest orator, after Grattan and Plunkett, that Ireland has produced, and in every respect worthy of being placed on a line with those great masters of speech. But there is really an insuperable difficulty in attempting a task which has been so inimitably performed already, and within only a few years. Mr. C. Phillips' sketch of his friend is certainly one of the most extraordinary pieces of biography ever produced. Nothing can be more lively and picturesque than its representation of the famous original. The reader of it can hardly be said not to have known Curran and Curran's Contemporaries. It has justly been said of this admirable work, that it is Boswell* minus *Bozzy. No Library should be without such a piece.*"—LORD BROUGHAM'S HISTORICAL SKETCHES OF STATESMEN.

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